

DATE OF DETERMINATION	2 November 2022
DATE OF PANEL DECISION	1 November 2022
DATE OF PANEL MEETING	19 October 2022
PANEL MEMBERS	Paul Mitchell (Chair), Stephen Gow, Penny Holloway and Joe Vescio
APOLOGIES	David Brown and Ian Pickles
DECLARATIONS OF INTEREST	Simon Richardson declared a perceived conflict of interest as he has made public statements supporting the proposed development and within his role as Mayor supported the progress of this assessment at various stages.

Public meeting held by videoconference on 19 October 2022, opened at 11:30am and closed at 6:45pm.

MATTER DETERMINED

PPSNTH-83 – Byron Shire Council – DA 10.2021.170.1 at 951 Broken Head Road, Broken Head – eco-tourist facility (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

Development application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to approve the application for the following reasons:

1. The proposal will result in mixed use of the site and is therefore permissible in the SP1 zone. The proposed facilities are designed and located such that the proposed development is consistent with relevant zone objectives.
2. The proposal, subject to the conditions imposed, is generally consistent with all applicable planning instruments and guidelines and is therefore an appropriate use of the site.
3. The site is suited to the intended use – it has good road access, the ability to be serviced with all necessary infrastructure, high amenity for visitors and contains land that is unconstrained and suited to the development proposed.
4. The proposed development is designed and sited in a way that is responsive to the environmental features of the land and, following implementation of the deferred commencement conditions, will make a positive contribution to the immediate environment.
5. In relation to ecological impacts, the panel notes the two opposing opinions by the ecological experts about the potential for significant impacts and the possible need to submit further material to comply with provisions of the Biodiversity Conservation Act 2016. Having carefully considered both opinions the panel agrees with Mr Parker that the land on which works will occur is mowed lawn and contains exotic species, that no removal of native vegetation is required and that the potential for indirect ecological impacts via noise or light spill is minor. The panel further believes that the development has been sited to avoid or minimise impacts

and the proposed impact compensation measures are appropriate meaning that no significant ecological impacts will occur.

6. The panel has carefully considered the deferred commencement conditions proposed by Council's officers and believes they are appropriate in content and that no deferral of essential considerations will occur. Specifically, the panel is confident that ample opportunities are available on the site to implement the proposed ecological mitigation and compensation measures, and that a vegetation management plan is an appropriate means of addressing potential ecological impacts and finally that the wastewater conditions applying to existing and proposed development can be made consistent.
7. Overall, the proposal will have no material adverse impact on the built environment and, for the reasons given above, will not have any unacceptable impacts on the natural environment. In relation to social and economic impacts, the proposal will be positive as it will enable additional visitation, expenditure and employment, as well as providing attractive opportunities for visitors.
8. The panel has carefully considered all the issues raised in both the written and oral submissions and believes that most have been addressed by the siting, design and management measures to be incorporated into the proposal. The remaining issues have been addressed by the conditions imposed. Overall, there are no residual issues warranting refusal of the application.
9. The panel concludes that the proposal is orderly development that is consistent with ESD principles and that its approval is in the public interest.

CONDITIONS

The Development Application was approved subject to the conditions provided by Council on 19 October 2022 with the following amendments by the Panel:

- Delete deferred commencement condition requiring Essential Energy approval as that has since been received.
- Within deferred commencement conditions, move requirement for targeted fauna surveys to be part of the deferred commencement condition requiring Provision of a Vegetation Management Plan and update reference in relation to the targeted fauna surveys to deferred condition Sub (b)(ii)
- Delete the last sentence of deferred condition requiring an amendment to current development consents in relation to wastewater management
- Amend the requirement to submit evidence of compliance for the deferred commencement conditions by including a reference to the conditions
- Renumber deferred commencement conditions accordingly
- Update plan references in Condition 1 and add the following paragraph:

Compliance with Revision 14 of the Precinct Plan – APZ (20/7/2022) is only for the purposes of the Rural Fire Service General Terms of Approval. In all other instances, the development must be carried out in accordance with Revision 15 of the Precinct Plan – APZ (27/9/2022).

- Insert reference to Schedule 4 and 5 in Condition 5.
- Delete Condition 7 and renumber conditions accordingly.
- Insert Condition 8 as follows:

8. Amend Development Consent DA 5.1998.146.1

Prior to the issue of the Construction Certificate, Condition F3 of DA 5.1998.146.1 is to be amended pursuant to Section 4.17(5) of the *Environmental Planning and Assessment Act 1979* to read:

F3 (a) No more than 72 people will be accommodated on the site at any one time and such people will be engaged only in private education and any activity ancillary thereto.

- (b) Subject to compliance with conditions G1, G2 and G3, the limit of 72 People shall be increased to 112.
- (c) Despite conditions (a) and (b) above, the numbers of people accommodated on the site at any one time may be increased to include those staying in the approved eco-tourist facility, subject to compliance with Development Consent DA 10.2021.170.1.

- Amend Condition 11) to read as follows:

Environmental Management Plan required

An Environmental Management Plan (EMP) shall be prepared and submitted to Council for approval prior to the issue of the construction certificate for the development. The EMP shall include, but not be limited to:

- a. All actions, management and monitoring commitments in the approved Vegetation Management Plan;
- b. Records of occupation of the eco-tourist facility;
- c. Records of measures implemented to enhance the appreciation of guests of the environmental and cultural values of the site or area, including information provided to guests, signs, guest induction/welcoming procedures, guest education, staff training and the like;
- d. Records of vegetation management required to comply with bush fire APZs;
- e. Records to demonstrate compliance with the approved operational waste management plan including waste minimisation measures and waste output;
- f. Records of upgrades, maintenance and monitoring of the wastewater treatment plant and disposal area/s;
- g. Records to demonstrate compliance with the approved Water efficiency and re-use plan;
- h. Records to demonstrate compliance with the approved Solar Energy Plan including capacity of, and electricity generated by, the photo voltaic system;
- i. Details of the mechanisms employed to monitor and review the effect of the development on the natural environment; and
- j. Identification of performance objectives for the eco-tourist facility in relation to minimising impacts on, and enhancing, the natural environment; and
- k. Details of improvements implemented to management and quality control.

The EMP must be prepared by a suitably qualified and experienced person.

- Delete Condition 23 (BASIX) and renumber conditions accordingly
- Delete Condition 32 (BASIX) and renumber conditions accordingly
- Insert Condition 38 as follows, and renumber conditions accordingly:

The re-location works of Essential Energy's network must follow Essential Energy's contestable works process and be at the Applicant's expense. Refer Essential Energy's Contestable Works Team for requirements via contestableworks@essentialenergy.com.au

- Insert Condition 39 as follows, and renumber conditions accordingly:
Essential Energy's records indicate existing overhead and underground infrastructure located on the property, impacted by the proposal. The following is required:
 - a) Minimum safety clearance requirements are to be maintained at all times, ground clearances under the overhead powerlines must be maintained. If ground clearances are compromised, the landowner/developer may be required to increase the height of the overhead powerlines, at their cost. Refer Essential Energy's policy *CEOM7106.25 Minimum Clearance Requirements for NSW* and the latest industry guideline currently known as *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*.

- b) Any proposed driveway access must remain at least 1.0 metre away from any electricity infrastructure (power pole, streetlight) at all times, to prevent accidental damage.
- c) The cables are to maintain a minimum clearance of 2.0 metres (1.0 metre either side of the cable) to any activity.
- d) Any excavation works in these areas must comply with *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*. Prior to carrying out any works, a “Dial Before You Dig” enquiry should be undertaken in accordance with the requirements of *Part 5E (Protection of Underground Electricity Power Lines)* of the *Electricity Supply Act 1995* (NSW) to locate all existing underground cables.
- e) Any landscaping, garden beds, tree planting must not be placed in the 2.0 metre clearance area over the cables and must also comply with *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*.
- f) The proposed footpath to the new reception building must not be placed over the cables and must maintain the clearance area of 2.0 metres (1.0 metre either side of the cables).
- a. Works around the cables must be managed. If the ground levels over the cables are to be altered, clearances must be maintained and cables integrity protected. Any works over these cables must meet all Essential Energy design and construction requirements.
- b. Where the cables cross new roads, the cables must be conduit and must not impact on existing cables, cable joints, pits, pillars and the like – refer Essential Energy’s policy *CEOM7098 Distribution Underground Design and Construction Manual* and *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*.
- g) The proposed spa must:
 - i. remain clear of the cables by the required distances;
 - ii. be suitably engineered to hold itself in place should Essential Energy be required to dig the cable/s up, that is, it must not collapse into the cable trench; and
 - iii. meet clearance requirements from any Essential Energy equipment, as per the relevant standards and design and construction requirements.
- h) The existing high voltage cables (near the footpath to the existing swimming pool) must not have anything constructed (or otherwise) over the top of it.

- Insert Condition 40 as follows, and renumber conditions accordingly:

The Applicant will need to engage the services of an Accredited Service Provider to ensure adequate provision of power is available to the proposed development in accordance with *NSW Service and Installation Rules*. A Level 2 Electrician will be able to advise on these requirements and carry out the required work to ensure compliance.

- Insert Condition 47 as follows, and renumber conditions accordingly:

Implementation of measures to minimise indirect impacts on fauna

Documentary evidence from a suitably qualified and experienced expert must be submitted demonstrating that the plans and specifications provided to satisfy deferred commencement requirement 1.(b) for the management of indirect impacts on fauna have been implemented.

- Insert reference to Condition 38 in revised Condition 49 (previously 47).
- Insert reference to Condition 5 in revised Condition 50 (previously 48).
- Insert Condition 51 as follows, and renumber conditions accordingly:

Compliance with Essential Energy requirements

A Certificate from an appropriately qualified person is to be submitted to the Private Certifier with the Occupation Certificate demonstrating compliance with **conditions 38-40**.

- Add the following paragraph to Condition 52 (previously Condition 49):

The construction of any works, including trails, on land zoned C2 Environmental Conservation is not authorised by this consent.

- Insert Condition 60 as follows, and renumber conditions accordingly:

Environmental Management Plan annual report

An annual report shall be prepared that details actions implemented, monitoring results and performance against the commitments in the approved EMP (**condition 11**). The annual report shall be provided to Council on request.

- In Schedule 6, add the following text:

Essential Energy - Advice

1. If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment.
 2. Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with.
 3. In addition, Essential Energy's records indicate there is electricity infrastructure located within the property and within close proximity of the property. Any activities within these locations must be undertaken in accordance with *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*. Approval may be required from Essential Energy should activities within the property encroach on the electricity infrastructure.
 4. Prior to carrying out any works, a "Dial Before You Dig" enquiry should be undertaken in accordance with the requirements of *Part 5E (Protection of Underground Electricity Power Lines)* of the *Electricity Supply Act 1995* (NSW).
 5. Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure. These include the *Code of Practice – Work near Overhead Power Lines/Underground Assets*.
- In Schedule 6, delete the subheading "Additional conditions if swimming pools approved" and all text under it


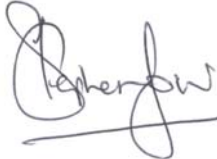


The final set of approved conditions is attached at Schedule 2.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Impact on bush fire threat
- Assessment, and impacts, of the development on ecology/habitat/biodiversity. Requirement for a Biodiversity Development Assessment Report
- Noise impacts on neighbours
- Failure to refer the proposal under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)
- Permissibility of the proposal
- Lack of compliance with past consents
- Issues with previous rezoning for the property
- Servicing

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised during the public meeting..

PANEL MEMBERS	
 Paul Mitchell OAM (Chair)	 Stephen Gow
 Penny Holloway	 Joe Vescio

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-83 – Byron Shire Council – DA 10.2021.170.1
2	PROPOSED DEVELOPMENT	Twelve (12) New Eco Tourist Facility Cabins, Five (5) Ancillary Buildings comprising a Reception/Administration building, a Bush Fire Refuge building, a Maintenance/Storage building, a Wellness building and a Pool facilities building and Addition of a Deck to the Centre building, and Use of the Centre building as a restaurant and café ancillary to the ecotourism and private education development.
3	STREET ADDRESS	951 Broken Head Road, Broken Head
4	APPLICANT OWNER	Planners North BHCF Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Eco-tourist facilities over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ○ State Environmental Planning Policy (Resilience and Hazards) 2021 ○ State Environmental Planning Policy (Transport and Infrastructure) 2021 ○ Byron Local Environmental Plan 2014 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Byron Shire Development Control Plan 2014 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i> • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council Assessment Report: 12 October 2022 • Written submissions during public exhibition: 2648 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Tamara Smith MP, David Milledge, Ralf Buckley, Jan Barham, Michael Hayward, Holly English, Helena Norberg-Hodge, Jan Barham on behalf of Simeon Michaels; Tim Robertson on behalf of Helen Stahmann; Ian Cohen & David Fligelman on behalf of Broken Head Protection Committee and Helen Stahmann ○ On behalf of the applicant – Steve Connelly ○ On behalf of Council – Ivan Holland and Chris Larkin
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 28 July 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Paul Mitchell (Chair), Stephen Gow, Penny Holloway, Basil Cameron and David Brown ○ <u>Council assessment staff</u>: Ivan Holland, Chris Larkin and Steve Daniels ○ <u>Department</u>: Carolyn Hunt and Lisa Foley

		<ul style="list-style-type: none"> • Briefing: 20 April 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Stephen Gow (acting Chair), Penny Holloway and Joe Vescio ○ <u>Council assessment staff</u>: Ivan Holland ○ <u>Department</u>: Carolyn Hunt and Cameron Brooks • Site inspection: 19 October 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Paul Mitchell (Chair), Stephen Gow, Penny Holloway and Joe Vescio ○ <u>Council assessment staff</u>: Ivan Holland ○ <u>Applicant</u>: Steve Connelly • Final briefing to discuss council's recommendation: 19 October 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Paul Mitchell (Chair), Stephen Gow, Penny Holloway and Joe Vescio ○ <u>Council assessment staff</u>: Ivan Holland, Gene Mason and Chris Larkin ○ <u>Department staff</u>: Carolyn Hunt, Stuart Withington and Lisa Foley
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Provided on 19 October 2022

SCHEDULE 2

SCHEDULE 1. DEFERRED COMMENCEMENT CONDITION PURSUANT TO SECTION 4.16(3)

The following condition concerns matters as to which the Council must be satisfied before the consent can be issued:

1. Deferred Commencement Consent

This consent does not operate until Council is satisfied as to the following matters:

(a) Management of indirect impacts on fauna

Provision of detailed plans and specifications that demonstrates impacts from the development on fauna from lighting will be minimised to the greatest practicable extent. The plans and specifications must be prepared in accordance with the best practice lighting design principles in the National Light Pollution Guideline for Wildlife (Department of Environment and Energy, January 2020) and must include, but not be limited to:

- Minimal external lighting located close to the ground, away from reflective surfaces, with adaptive, timing controls and reduced and/or filtered wavelengths;
- Provision of torches in cabins for use by guests; and
- Use of adaptive lighting controls for internal lighting and use of blinds or equivalent to minimise light spill from buildings.

Details of measures to minimise the impacts of the development on fauna from noise and vehicle strikes including, but not limited to:

- Restricting amplified music and voices;

- Restricting evening use of the “food offering” (CB.04) building;
- Signage in cabins and ancillary building informing guests of possible impacts on fauna from noise and vehicle strikes; and
- Restricting traffic/vehicle movements during high risk times for vehicle strikes.

(b) Provision of a Vegetation Management Plan

A Vegetation Management Plan (VMP) must be prepared and submitted to Council for approval. The VMP must retain and improve habitat on that part of the site covered by the VMP and must detail measures to protect native flora and fauna and their habitats and environmental enhancement planting. The VMP must:

- illustrate on maps of a suitable scale (1:200 or better) the accurate extent of bush fire asset protection zones (APZs) for the development and the location and extent of areas for enhancement and/or planting on the subject site. The areas for enhancement planting must include, but not be limited to, the “proposed rainforest” areas and riparian zone of the watercourse (labelled “existing drain”) on Precinct Plan – APZ (C.01. Revision 15, 27/09/2022) areas.
- Ensure that additional locations for enhancement and planting are informed by the targeted fauna survey effort, focusing on areas that presently have low habitat value for native flora and fauna.
- Ensure that locations for enhancement and planting are additional to, and do not overlap with, any environmental enhancement works required by, or committed to under, previous development consents for the property.
- for each location identified for enhancement and planting indicate the area, proposed density of planting and total number of plants to be planted in plan and word form and demonstrate that the equivalent of 10,800 plantings or an area of 6.72 ha (based on a density of 2.5m/tree) will be restored and/or enhanced.
- indicate that only local vegetation will be planted and include a list of locally occurring native tree, shrub and ground cover plant species suitable for planting as part of the environmental enhancement planting program.
- detail the methodology for habitat restoration and maintenance over a minimum period of 10 years and specifying the use of qualified and experienced bush regenerators only.
- detail weed control, monitoring and management of the areas covered by the VMP and routine reporting of progress.
- specify timelines for the planting and/or restoration works including commencement prior to the issue of the construction certificate.
- Be in accordance with the “BSC Guidelines for preparing: Vegetation Management Plans (VMP) or Biodiversity Conservation Management Plans (BCMP).
- Include a program of vegetation management actions over a minimum period of 10 years.

For the purposes of Sub (b)(ii), targeted fauna surveys must be carried out across the entire area of Lot 1 DP1031848 and the results detailed in the VMP. At a minimum, the following fauna species must be targeted by surveys:

- Common planigale (*Planigale maculata*)
 - Eastern grass owl (*Tyto longimembris*)
 - White-eared monarch (*Carterornis leucotis*)
 - Rose-crowned fruit-dove (*Ptilinopus regina*)
 - Square-tailed kite (*Lophoictinia isura*)
 - Pied oystercatcher (*Haematopus longirostris*)
 - Eastern blossom bat (*Syconycteris australis*)
 - Eastern long-eared bat (*Nyctophilus bifax*)
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- Wallum sedge frog (*Litoria alongburensis*)

Targeted fauna surveys must be carried out during the time specified for the species in the NSW Threatened Biodiversity Data Collection and must be in accordance with the following guidelines:

- Threatened Biodiversity Survey and Assessment: Guidelines for Developments and Activities (NSW Department of Environment and Conservation 2004)
- Threatened species survey and assessment guidelines: field survey methods for fauna – amphibians (NSW Department of Environment and Climate Change 2009)

(c) Amendment to current development consents in relation to wastewater management

Any conditions/requirements in current development consents and associated approvals under s.68 of the *Local Government Act 1993* for the property relating to the management, treatment and disposal of wastewater that conflict with the changes and upgrades approved by this consent must be identified and made consistent with the requirements of this consent.

Evidence is required to be submitted of compliance with the above deferred commencement conditions 1(a) to (c), sufficient to satisfy the Council as to those matters, within 2 years of the date of this Notice of Determination. If satisfactory evidence is produced in accordance with this requirement, the Council will give written notice to the applicant of the date from which this consent commences operation.

If Council has not notified the applicant within a period of 28 days after the applicant's evidence is produced to it, the Council is, for the purposes only of Section 8.7 of the *Environmental Planning and Assessment Act 1979*, taken to have notified the applicant that Council is not satisfied as to those matters on the date on which that 28-day period expires.

SCHEDULE 2. CONDITIONS OF CONSENT

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

Parameters of consent

1. Approved plans and supporting documentation

Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Plan No.	Revision No.	Plan Title	Drawn by	Dated
DA 03	15	CB.01 – Centre Additions	Harley Graham Architects	27/09/2022
DA 04	15	CB.02 – Reception Building	Harley Graham Architects	27/09/2022
DA 05	15	CB.02 – Reception Building	Harley Graham Architects	27/09/2022

DA 06	15	CB.03 – Onsite Evacuation Building	Harley Graham Architects	27/09/2022
DA 07	15	CB.04 – Wellness + Pool Facilities	Harley Graham Architects	27/09/2022
DA 08	15	CB.04 – Wellness + Pool Facilities	Harley Graham Architects	27/09/2022
DA 09	15	CB.04 – Wellness + Pool Facilities	Harley Graham Architects	27/09/2022
DA 10	15	CB.04 – Wellness + Pool Facilities	Harley Graham Architects	27/09/2022
DA 11	15	CB.06 – Store & Utility	Harley Graham Architects	27/09/2022
DA 12	15	B – Rainforest Retreat TYPICAL	Harley Graham Architects	27/09/2022
DA 13	15	B – Rainforest Retreat Sections A	Harley Graham Architects	27/09/2022
DA 14	15	B – Rainforest Retreat Sections B	Harley Graham Architects	27/09/2022
DA 15	15	Materials Schedule	Harley Graham Architects	27/09/2022
B.01	15	Precinct Plan A - Satellite	Harley Graham Architects	27/09/2022
C.01	15	Precinct Plan - APZ	Harley Graham Architects	27/09/2022
D.00	15	Precinct & Key Plan A	Harley Graham Architects	27/09/2022
D.01	15	Vegetation Analysis – Fig 1	Harley Graham Architects	27/09/2022
D.02	15	Vegetation Analysis – Fig 2	Harley Graham Architects	27/09/2022

K.01	15	Riparian Corridor (Offset Plan)	Harley Graham Architects	27/09/2022
C.01	14	Precinct Plan – APZ	Harley Graham Architects	20/07/2022
XXXX	A	Linneaus UG Cable Location Sketch Proposed New Cable Route	ECL Power Services	23/9/22

Compliance with Revision 14 of the Precinct Plan – APZ (20/7/2022) is only for the purposes of the Rural Fire Service General Terms of Approval. In all other instances, the development must be carried out in accordance with Revision 15 of the Precinct Plan – APZ (27/9/2022).

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Note: an inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

2. **Conditions prescribed by the Regulation**

This development consent is subject to the conditions prescribed by the regulations in accordance with subsection 4.17(11) of the Environmental Planning and Assessment Act 1979. Conditions are provided in a **Schedule** of this consent.

3. **Facilities only for use by guests**

The facilities and ancillary buildings associated with the eco-tourist facility are only approved to be used by guests of the eco-tourist facility and private education facility. The facilities and ancillary buildings are not approved for day use by external visitors to the property/site as the wastewater treatment plant and disposal system has not been designed and/or constructed to have sufficient capacity for additional wastewater loads beyond established maximum occupancy/guest numbers.

4. **Tree Removal**

The development must not cause, or result in, any native trees, shrubs or plants being removed from the site.

5. **Integrated Approvals from other State Government Approval Bodies**

This development consent includes integrated development approvals under Sections 4.46 and 4.47 of the *Environmental Planning and Assessment Act 1979*, being:

- a) an authorisation under section 100B of the *Rural Fires Act 1997* in respect of bush fire safety of a development of land for special fire protection purposes; and
- b) an activity approval under Part 3 of Chapter 3 of the *Water Management Act 2000*;

and is subject to the General Terms of Approval from the NSW Rural Fire Service dated 30 august 2022 and from the Department of Planning and Environment dated 2 September 2022 contained in **Schedule 4 and 5** of this Notice of Determination.

The following conditions are to be complied with prior to issue of a Construction Certificate for building works

6. **Construction site management plan**

Before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:

- location and materials for protective fencing and hoardings to the perimeter on the site
- provisions for public safety
- pedestrian and vehicular site access points and construction activity zones
- details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
- protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- details of any bulk earthworks to be carried out
- location of site storage areas and sheds
- equipment used to carry out all works
- a garbage container with a tight-fitting lid
- dust, noise and vibration control measures
- location of temporary toilets.

The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

7. **Initial ecological restoration required by approved Vegetation Management Plan**

Certification by an appropriately qualified and experienced ecologist and/or bush regenerator must be provided that confirms that all initial ecological restoration and management actions specified in the approved Vegetation Management Plan to be completed prior to the issue of a construction certificate have been carried out.

8. **Amend Development Consent DA 5.1998.146.1**

Prior to the issue of the Construction Certificate, Condition F3 of DA 5.1998.146.1 is to be amended pursuant to Section 4.17(5) of the *Environmental Planning and Assessment Act 1979* to read:

- F3 (a) No more than 72 people will be accommodated on the site at any one time and such people will be engaged only in private education and any activity ancillary thereto.
- (b) Subject to compliance with conditions G1, G2 and G3, the limit of 72 People shall be increased to 112.
- (c) Despite conditions (a) and (b) above, the numbers of people accommodated on the site at any one time may be increased to include those staying in the approved eco-tourist facility, subject to compliance with Development Consent DA 10.2021.170.1.

9. **Solar energy plan**

The application for a Construction Certificate is to include plans and specifications for the installation of at least 250kW solar photo voltaic system in conjunction with at least 700kWh of battery storage for the development. The plan of proposed solar energy generation and storage for the development must include a management plan that details the timing for installation of the solar photo voltaic and battery system and how reliance on energy from the grid will be minimised and/or avoided within 5 years from the commencement of construction of the development.

The plans and specifications are to be approved as part of the Construction Certificate.

10. **Water efficiency and re-use plan**

The application for a Construction Certificate is to include plans and specifications for water efficiency and re-use measures to be implemented for the development including the installation of rainwater tanks for each new building associated with the approved eco-tourist facility. Each cabin must have a rainwater tank with a capacity of at least 9000L exclusive of any additional water storage required for firefighting purposes required by this development consent. Details of the use of water collected in rainwater tanks must be provided including, but not limited to, water for toilet flushing, external taps and irrigating landscaping.

Such plans are to be approved as part of the Construction Certificate.

11. Environmental Management Plan required

An Environmental Management Plan (EMP) shall be prepared and submitted to Council for approval prior to the issue of the construction certificate for the development. The EMP shall include, but not be limited to:

- l. All actions, management and monitoring commitments in the approved Vegetation Management Plan;
- m. Records of occupation of the eco-tourist facility;
- n. Records of measures implemented to enhance the appreciation of guests of the environmental and cultural values of the site or area, including information provided to guests, signs, guest induction/welcoming procedures, guest education, staff training and the like;
- o. Records of vegetation management required to comply with bush fire APZs;
- p. Records to demonstrate compliance with the approved operational waste management plan including waste minimisation measures and waste output;
- q. Records of upgrades, maintenance and monitoring of the wastewater treatment plant and disposal area/s;
- r. Records to demonstrate compliance with the approved Water efficiency and re-use plan;
- s. Records to demonstrate compliance with the approved Solar Energy Plan including capacity of, and electricity generated by, the photo voltaic system;
- t. Details of the mechanisms employed to monitor and review the effect of the development on the natural environment; and
- u. Identification of performance objectives for the eco-tourist facility in relation to minimising impacts on, and enhancing, the natural environment; and
- v. Details of improvements implemented to management and quality control.

The EMP must be prepared by a suitably qualified and experienced person.

12. Amendments to the plans required

The plans submitted for approval of the Construction Certificate must be amended as follows:

- a) Delete/remove the boardwalk spanning from the Reception Building (CB.02) to Foundation Drive as shown on Plan D.01 (revision 15, 27/09/2022).
- b) Delete/remove the cabin swimming pools, labelled 'Plunge pool' on Plan D.12 (revision 15, 27/09/2022).
- c) To provide elevations and sections for the Bin Store & Garbage structure adjacent to the Centre building (CB.01) as shown on plan DA 03 (revision 15, 27/09/2022).
- d) Delete/remove the "bike store" as shown on Plan DA 11 (revision 15, 27/09/2022). Bicycle storage may be relocated to the Reception building (CB.02) but must be covered/roofed, in view/obvious to guests and co-located with end-of-trip facilities including toilets and /showers.

Such plans are to be approved as part of the Construction Certificate.

13. Erosion and Sediment Control Plan required

The application for a Construction Certificate is to include an Erosion and Sediment Control Plan that details the measures to be employed to control erosion and loss of sediment from the site during construction. The Erosion and Sediment Control Plan must:

- be in accordance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings";

- include a cut and fill plan that shows the location and extent of earthworks required for the development;
- include cross-sections for proposed earthworks particularly in relation to buildings in proximity to the watercourse (Store & Utility – CB.06 and Reception Building – CB.02); and
- demonstrate control over the discharge of stormwater and containment of run-off and pollutants leaving the site/premises through the installation of erosion control devices such as catch drains, energy dissipaters, level spreaders and/or sediment control devices such as filter fences and sedimentation basins.

The Erosion and Sediment Control Plan must be approved as part of the Construction Certificate.

14. **Details of stormwater drainage**

The application for a Construction Certificate is to include plans and specifications for stormwater drainage in accordance with AS/NZS 3500.3:2003, *Plumbing and drainage, Part 3: Stormwater drainage*. All stormwater new buildings and hardstand areas must be conveyed by a gravity system to the watercourse (labelled as existing drain on Plan B.01 (revision 15, 27/09/2022)). Such plans and specifications must be approved as part of the Construction Certificate.

The following features must be included in the design of the stormwater drainage for the development:

- Stormwater flows from minor and major storm events are to stay aboveground using vegetated swales or similar.
- Rainwater tanks for each new building in accordance with the water efficiency and re-use plan.
- Overflow from rainwater tanks to be directed to constructed gravel pits.
- Vegetation of the watercourse to provide water quality treatment during the flow of stormwater through the site.
- Energy dissipaters at stormwater outlet points to the watercourse.
- An additional stormwater quality measures required to meet the objectives of Table B3.1 of Chapter B3 of DCP 2014.

15. **Car parking layout, vehicle circulation and access plans required**

The application for a Construction Certificate is to include plans and specification that indicate access, vehicle parking and manoeuvring details in accordance with the plans approved by this consent.

In relation to car parking, twelve car parking spaces, of which two must be accessible, must be provided for the eco-tourist facility development. Provision of the required car parking spaces under this development consent may utilise existing car parking on site but must not result in a car parking shortfall for the property (see Note). Parking user class 2 and class 4 must be adopted for general parking and accessible parking respectively.

The site access controlled gate must be moved at least 4m further into the site to accommodate 24m of traffic queue length on the driveway, details of which must be provided.

The access, vehicle parking and footpaths for the site are to comply with the requirements of Australian Standard (AS) 2890.1-2004: Parking facilities, Part 1: Off-street car parking, AS 2890.2 – 2010 - Parking facilities, Part 2: Off-street commercial vehicle facilities and Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".

Plans and specifications for any new vehicle access, parking and manoeuvring works are to include, but not be limited to, the following items:

- a) Pavement design, comprising an all-weather surface, such as asphalt, bitumen seal, concrete, pavers or other similar treatment;

- b) Site conditions affecting the access;
- c) Current and design levels;
- d) Longitudinal section from the road centreline to the car space(s);
- e) Drainage details;
- f) Turning paths; and
- g) Line marking and signage.

A pedestrian access mobility plan (footpath network) must also be provided.

The plans and specifications are to be prepared by a qualified, practicing Civil Engineer with relevant experience and competence. The Civil Engineer is to be a corporate member of the Institution of Engineers Australia, or eligible to become a corporate member.

Such plans and specifications must be approved as part of the Construction Certificate.

Note: Development consents for the property have not been fully utilised with some approved buildings not yet being constructed. It is estimated that 78 car parking spaces are required if all development consents for the property are fully enacted with 63 car parking space being currently available.

16. Drinking Water Management System required

The application for a Construction Certificate is to include a Drinking Water Management System or Quality Assurance Program for Drinking Water for the development in accordance with the requirements of New South Wales Private Water Supply Guidelines (<http://www.health.nsw.gov.au/environment/water/Publications/private-water-supply-guidelines.pdf>).

The Drinking Water Management System or Quality Assurance Program for Drinking Water for the development must be prepared by a suitably qualified and experienced professional.

The Drinking Water Management System or Quality Assurance Program for Drinking Water for the development must be approved as part of the Construction Certificate.

17. Upgrade of on-site sewage management facility

The current wastewater treatment system for the property must be upgraded to accommodate the additional wastewater expected to be generated from the proposed development. The necessary upgrades to the wastewater treatment system are detailed in the Technical Memorandum RE: Consolidated description of the Wastewater Arrangements concerning DA 2021-170 (Planners North, 15 October 2021) particularly Sections 4 and 5.

An approval under Section 68 of the *Local Government Act 1993* for on-site sewage disposal must be obtained from Council prior to issue of a Construction Certificate. Such approval must be issued after the date of this consent.

The application for Section 68 approval must be accompanied by a report prepared by a suitably qualified professional with demonstrated experience in sewage treatment and disposal, which addresses the site specific design requirements for sewage management in accordance with the requirements of the *Local Government Act 1993*, and Regulation and Guidelines approved by the Director General.

18. Water and Sewerage - Section 68 approval required

If required, an Approval under Section 68 of the *Local Government Act 1993* to carry out water supply work and sewerage work must be obtained.

19. Trees to be retained and protected

All trees within 10m of new development approved by this consent must be illustrated on all relevant construction plans, with the corresponding tree protection zone (TPZ) formulated in accordance with *AS 4970-2009 – Protection of Trees on Development Sites*.

Trees within 10m of new development are to be protected by a TPZ exclusion fence. The fence is to be constructed in accordance with Sections 3.2 and 4.3 of AS 4970-2009 and must:

- a) Be located outside the dripline of the tree to minimise disturbance of tree roots;
- b) have a minimum height of 1.8m;
- c) be constructed of wire mesh panels, plywood, steel star pickets or similar, with a maximum distance of 2m between star pickets;
- d) have a minimum of 3 strands of steel wire or similar;
- e) have high visibility barrier mesh (e.g., orange), shade cloth or similar, attached to the outside of the fence and continuing around its perimeter; and
- f) include at least one TPZ sign in accordance with Section 4.4 of AS 4970-2009.

Activities that are excluded within the TPZ (as per section 4.2 of AS 4970-2009) include excavation, construction activity, grade changes, surface treatment and storage of material. If these activities are required within the TPZ they may only occur under the supervision of the project arborist (minimum AQF level 5 qualified arborist).

20. **Updated landscaping plan required**

The application for a Construction Certificate is to include an amended Landscaping Plan that incorporates adequate detail to demonstrate compliance with the relevant provisions of Chapters B9 of the Byron Shire Development Control Plan 2014 including:

- a) retention of suitable existing vegetation;
- b) landscaping that minimises visual impacts of the development;
- c) landscaping that minimises bushfire hazard; and
- d) planting selection that is locally indigenous to locality and improves biodiversity where possible.

The updated landscaping plan should include consideration of the following landscaping for privacy and reduction of visual impacts:

- between individual cabins ;
- between cabins B.1 and B.8 and the driveway; and
- between the western cabins (B.8 to B.12) and the pool/tennis court complex.

The landscaping plan must indicate:

- proposed location for planted shrubs and trees;
- botanical name of shrubs and trees to be planted;
- planting of locally endemic, native species;
- mature height of trees and shrubs to be planted;
- location of grassed and paved areas; and
- location of trees identified for retention in the development application plans.

The plan is to be prepared by a suitably qualified landscape architect / architect / ecologist who has appropriate experience and competence in landscaping.

Such plans and specifications must be approved as part of the Construction Certificate.

21. **Section 7.12 development consent levy to be paid**

The levy will be calculated as follows:

Levy payable = %C x \$C

- **%C** is the levy rate applicable as set out in the latest Ministerial Direction issued under Section 7.17 of the *Environmental Planning and Assessment Act 1979*.
- **\$C** is the proposed cost of carrying out the development.

The rate of **%C** is:

Proposed cost of the development	Maximum percentage of the levy
Up to \$100,000	Nil
\$100,001–\$200,000	0.5 percent
More than \$200,000	1.0 percent

The cost of development must be calculated in accordance with clause 25J of the Regulation. The Cost Summary Report as set out in schedule 2 of the Section 7.12 contributions plan must be submitted to Council with the payment. The cost summary report must be prepared by a quantity surveyor. Copies of the cost summary report are available at Council's main office or may be downloaded from Council's website.

22. **Building materials and colours to be specified**

The application for a Construction Certificate is to include plans and specifications that indicate the proposed building materials and colours generally in accordance with the approved Materials Schedule (DA 15, Revision 15, 27/09/2022). All metal roof sheeting must be medium or dark tone to minimise visual impacts. White and near white colours is not permitted for any external finishes.

Such plans and specifications must be approved as part of the Construction Certificate.

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

In accordance with Section 6.8 of the Environmental Planning and Assessment Act 1979 (as amended), a Construction Certificate for BUILDING WORKS shall NOT be issued until any Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid (as applicable).

These payments can be made online at www.longservice.nsw.gov.au. Proof of payment is required to be submitted with the Construction Certificate application.

For further information regarding the Long Service Payment please refer to the website above.

24. **Updated Waste Management Plans**

Before the issue of a construction certificate, the applicant is to provide:

- a) A construction waste management plan; and
- b) An operational waste management plan.

The waste management plans must be prepared in accordance with the EPA's Waste Classification Guidelines and Chapter B8 of Byron Shire Development Control Plan 2014 (DCP 2014) and must specify the proposed method of recycling or disposal and the waste management service provider.

The construction waste management plan should be generally in accordance with Construction Waste Management Plan Eco Tourism Mixed Use Proposal Broken Head (Planners North, January 2021) and should detail the measures to ensure 90% of construction waste is diverted from landfill through reuse and/or recycling.

The operational waste management plan must include, but not be limited to:

- Updated predicted waste generation from the development;

- Details of commitments to ensure single use plastics are avoided and reusable containers are used where practicable; and
- Details of management of organic wastes including the proposed composting/worm farm system.

A template is provided on Council's website to assist in providing this information
www.byron.nsw.gov.au/files/publication/swmmp-pro-forma.doc

The following conditions are to be complied with prior to any building or construction works commencing

25. Erosion and Sediment Control

Erosion and sediment controls are to be in place in accordance with the approved Erosion and Sediment Control Plan prior to building or construction works commencing.

26. Toilet facilities

Toilet facilities are to be provided, at or in the vicinity of the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be a toilet connected to an accredited sewage management system approved by the Council.

The following conditions are to be complied with during any building or construction works

27. Hours of work

The principal certifier must ensure that building work, demolition or vegetation removal is only carried out between:

- 7am to 6pm on Monday to Friday.
- 8am to 1pm on Saturday.

The principal certifier must ensure building work, demolition or vegetation removal is not carried out on Sundays and public holidays, except where there is an emergency.

Unless otherwise approved within a construction site management plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Note: Any variation to the hours of work requires Council's approval.

28. Construction Noise

While building work is being carried out, the applicant is to ensure that any noise caused by demolition or construction does not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.

29. Tree protection zone fencing to be maintained

The Tree Protection Zone (TPZ) exclusion fence is to be maintained for the duration of the site clearing, preparation, construction and landscaping works.

30. Inspection for on-site sewage management

All plumbing and drainage works associated with on-site sewage management are to be installed by a suitably qualified person. The plumbing and drainage works must adhere to the requirements of the NSW Code of Practice and AS 3500. The following inspections must be arranged with Council:

- a) Internal drainage prior to covering of the works.

- b) External drainage prior to the covering of works.
- c) Irrigation installation prior to the covering of works.
- d) Final

31. **Signs to be erected on building and demolition sites**

A sign must be erected in a prominent position on the work site:

- a. stating that unauthorised entry to the work site is prohibited, and
- b. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.

Any such sign is to be removed when the work has been completed.

32. **Building rubbish to be contained on site**

Rubbish and waste generated during building and construction is to be contained on the site in a 'Builder's Skip' or similar enclosure. Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

33. **Maintenance of erosion and sediment controls**

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

34. **Removal of wastes**

All wastes associated with the building and construction works are to be handled, and disposed of, in accordance with the requirements of the Work Cover Authority. Wastes must be disposed of at a Licenced Waste Facility. All wastes removed from the site must be managed and disposed of in accordance with the [NSW EPA Waste Classification Guidelines \(2014\)](#)

Documentary evidence that this condition has been complied with must be provided to Council on request.

35. **Excavated natural materials and waste disposal**

Any and all excavated natural materials and builders waste transported from the site must be accompanied (a copy kept with the transporter) by a [NSW Protection of The Environment Operations Act s143 Notice](#).

36. **Discovery of relics or Aboriginal objects**

Subject to the express requirements below, the building and construction works must be carried out in accordance with the recommendations in the Aboriginal Cultural Heritage Assessment Report (Everick Heritage, Revision 9, November 2019) provided with the development application.

Demolition, building or construction works must cease immediately if a relic or Aboriginal object is unexpectedly discovered. The applicant must notify the Heritage Council of NSW of the discovery of a relic and Secretary of the Department of Planning, Industry and Environment of the discovery an Aboriginal object. Demolition, building or construction works may recommence at a time confirmed by either the Heritage Council of NSW or the Secretary of the Department of Planning, Industry and Environment.

In this condition:

- "relic" means any deposit, artefact, object or material evidence that:
 - a. relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and
 - b. is of State or local heritage significance; and

- “Aboriginal object” means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction and includes Aboriginal remains.

37. **Site Location**

The location of the buildings on the site must be established by a suitably qualified Surveyor and must confirm that all buildings and structures approved by this consent are located:

- a) At least 80m from the eastern property boundary;
 - b) West of land affected by predicted coastal erosion (referred to as coastal erosion precincts on Council’s GIS); and
 - c) At least 10m from the invert/centreline of the watercourse identified in the Riparian Corridor (Offset Plan) (K.01, Revision 15, 27/09/2022).
38. The re-location works of Essential Energy’s network must follow Essential Energy’s contestable works process and be at the Applicant’s expense. Refer Essential Energy’s Contestable Works Team for requirements via contestableworks@essentialenergy.com.au.
39. Essential Energy’s records indicate existing overhead and underground infrastructure located on the property, impacted by the proposal. The following is required:
- i) Minimum safety clearance requirements are to be maintained at all times, ground clearances under the overhead powerlines must be maintained. If ground clearances are compromised, the landowner/developer may be required to increase the height of the overhead powerlines, at their cost. Refer Essential Energy’s policy *CEOM7106.25 Minimum Clearance Requirements for NSW* and the latest industry guideline currently known as *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*.
 - j) Any proposed driveway access must remain at least 1.0 metre away from any electricity infrastructure (power pole, streetlight) at all times, to prevent accidental damage.
 - k) The cables are to maintain a minimum clearance of 2.0 metres (1.0 metre either side of the cable) to any activity.
 - l) Any excavation works in these areas must comply with *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*. Prior to carrying out any works, a “Dial Before You Dig” enquiry should be undertaken in accordance with the requirements of *Part 5E (Protection of Underground Electricity Power Lines)* of the *Electricity Supply Act 1995* (NSW) to locate all existing underground cables.
 - m) Any landscaping, garden beds, tree planting must not be placed in the 2.0 metre clearance area over the cables and must also comply with *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*.
 - n) The proposed footpath to the new reception building must not be placed over the cables and must maintain the clearance area of 2.0 metres (1.0 metre either side of the cables).
 - c. Works around the cables must be managed. If the ground levels over the cables are to be altered, clearances must be maintained and cables integrity protected. Any works over these cables must meet all Essential Energy design and construction requirements.

- d. Where the cables cross new roads, the cables must be conduit and must not impact on existing cables, cable joints, pits, pillars and the like – refer Essential Energy's policy *CEOM7098 Distribution Underground Design and Construction Manual* and *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*.
 - e) The proposed spa must:
 - i. remain clear of the cables by the required distances;
 - ii. be suitably engineered to hold itself in place should Essential Energy be required to dig the cable/s up, that is, it must not collapse into the cable trench; and
 - iii. meet clearance requirements from any Essential Energy equipment, as per the relevant standards and design and construction requirements.
 - f) The existing high voltage cables (near the footpath to the existing swimming pool) must not have anything constructed (or otherwise) over the top of it.
40. The Applicant will need to engage the services of an Accredited Service Provider to ensure adequate provision of power is available to the proposed development in accordance with *NSW Service and Installation Rules*. A Level 2 Electrician will be able to advise on these requirements and carry out the required work to ensure compliance.

The following conditions are to be complied with prior to occupation of the building

41. **Works to be completed prior to issue of a Final Occupation Certificate**
 All of the works indicated on the plans and approved by this consent, including any other consents that are necessary for the completion of this development including approvals issued under the *Local Government Act 1993* and the *Roads Act 1993*, are to be completed and approved by the relevant consent authority/s prior to the issue of a Final Occupation Certificate.
- Any Security bond paid for this application will be held until Council is satisfied that no further works are to be carried out that may result in damage to Council's road/footpath reserve.
42. **Internal driveway, footpath and vehicle parking areas in accordance approved plans**
 The internal driveway, footpath and vehicle parking areas are to be constructed from the property boundary to the proposed car space(s) in accordance with the approved plans.
43. **Stormwater disposal**
 Stormwater must be collected and disposed of in accordance with the stormwater drainage design plans approved as part of the Construction Certificate and such that stormwater flows are:
- a) Clear of buildings and infrastructure,
 - b) Not concentrated so as to cause soil erosion, and
 - c) Not onto adjoining land.
44. **Plumbing works – final certificate**
 All works in relation to any associated Section 68 Water and Sewerage approval must be fully complied with and have a Final Plumbing Certificate issued prior to the issue of an Interim or Final Occupation Certificate."
45. **On-site Sewage Management system must be completed**
 The on-site sewage management system is to be constructed in accordance with approved plans and in accordance with current specifications and standards. The system is not to be used and/or operated until a Council Officer has inspected the system and authorised its use.

46. **Approval to Operate required**

In accordance with the *Local Government Act 1993*, an Approval to Operate the onsite sewage management system must be obtained from Council. Forms may be downloaded from Council's website with '<http://www.byron.nsw.gov.au/on-site-sewage>'.

47. **Implementation of measures to minimise indirect impacts on fauna**

Documentary evidence from a suitably qualified and experienced expert must be submitted demonstrating that the plans and specifications provided to satisfy deferred commencement requirement 1.(b) for the management of indirect impacts on fauna have been implemented.

48. **Compliance with solar energy plan**

Documentary evidence from a suitably qualified and experienced expert must be submitted demonstrating that the solar energy plan provided with the construction certificate application has been complied with.

49. **Site Location Survey**

A final survey of the buildings and structures showing setbacks to the eastern property boundary, coastal erosion precincts and watercourse invert/centreline is to be submitted to the Private Certifier with the Occupation Certificate demonstrating compliance with **condition 38** and the approved plans.

50. **Compliance with bush fire conditions**

Documentary evidence from a suitably qualified and experienced bush fire expert must be submitted demonstrating that the bush fire conditions referred to in **condition 5** and attached to this Notice of Determination have been complied with.

51. **Compliance with Essential Energy requirements**

A Certificate from an appropriately qualified person is to be submitted to the Private Certifier with the Occupation Certificate demonstrating compliance with **conditions 38-40**.

The following conditions are to be complied with at all times

52. **Approved use**

Use of the development is approved for eco-tourist facility. Any activity other than the approved uses must not be carried out on the site without development consent. The use of the development and associated facilities is for overnight staying guests only. The maximum occupancy of the eco-tourist facility is 24 guests.

The construction of any works, including trails, on land zoned C2 Environmental Conservation is not authorised by this consent.

Note:

Eco-tourist facility means a building or place that—

- (a) provides temporary or short-term accommodation to visitors on a commercial basis, and
- (b) is located in or adjacent to an area with special ecological or cultural features, and
- (c) is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.

It may include facilities that are used to provide information or education to visitors and to exhibit or display items.

53. **Car parking spaces are to be available for the approved use**

Twelve (12) car parking spaces are to be provided and maintained for the eco-tourist facility, together with all necessary access driveways and turning areas, to the satisfaction of Council.

54. **Provision and quality of drinking water**

The provision of drinking water for the development must be in accordance with the approved Drinking Water Management System or Quality Assurance Program for Drinking Water for the development. Results of routine water quality monitoring must be kept for at least two years and provided to Council on request.

55. **Rainwater Supply**

Any rainwater tanks used for domestic water supply are required to divert water from the first rainfall using a first flush or bypass device.

56. **Prevention of water pollution**

Only clean, treated or unpolluted stormwater from the development is to be discharged to the watercourse.

57. **Planting required by approved Vegetation Management Plan**

All tree planting and other works specified in the approved Vegetation Management Plan must be maintained.

58. **Management of noise impacts**

- a) The eco-tourist cabins must not have air conditioning units installed.
- b) The use of the “beverage offering” area, may occur only between 8 am and 8pm.
- c) Amplified music and voices are not permitted.
- d) Any additional measures to minimise the impacts of the development on fauna from noise identified under deferred commencement condition 1(b).

59. **Waste minimisation and management**

The development must be operated in accordance with the relevant provisions of the approved operational waste management plan.

60. Environmental Management Plan annual report

An annual report shall be prepared that details actions implemented, monitoring results and performance against the commitments in the approved EMP (**condition 11**). The annual report shall be provided to Council on request.

61. **Must not interfere with the amenity of the neighbourhood**

The use of the eco-tourist facility must not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, dust, wastewater or otherwise.

Note: Any complaints to Council about ‘offensive’ noise will be dealt with under the provisions of the Protection of the Environment Operations Act 1997.

SCHEDULE 3. PRESCRIBED CONDITIONS

The prescribed conditions in accordance with Part 6 Division 8A of the Environmental Planning and Assessment Regulation as at the date of this development consent as are of relevance to this development must be complied with:

- Clause 98 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

Clause 98A Erection of signs

Clause 98B Notification of Home Building Act 1989 requirements

Clause 98C Conditions relating to entertainment venues

Clause 98D Condition relating to maximum capacity signage

Clause 98E Condition relating to shoring and adequacy of adjoining property

Refer to the NSW State legislation for full text of the clauses under Part 6 Division 8A of the [*Environmental Planning and Assessment Regulation 2000*](http://www.legislation.nsw.gov.au). This can be accessed at <http://www.legislation.nsw.gov.au>.

SCHEDULE 4. INTEGRATED DEVELOPMENT GENERAL TERMS OF APPROVAL DEPARTMENT OF PLANNING AND ENVIRONMENT

Department of Planning and Environment



Contact: Department of Planning and Environment—Water
Phone: 1800 633 362
Email: waterlicensing.servicedesk@dpie.nsw.gov.au

Our ref: IDAS-2022-10095
Your ref: DA10.2021.170.1

2 September 2022

The General Manager
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482

Attention: Ivan Holland

Uploaded to the ePlanning Portal

Dear Sir/Madam

Re: IDAS-2022-10095 - Integrated Development Referral – General Terms of Approval

Dev Ref: DA10.2021.170.1

Description: Mixed Use Development comprising Twenty Seven (27) New Eco Tourist Facility Cabins, Seven (7) Ancillary Buildings including Wellness Facility, Refuges, Depot, Addition of Deck to Existing Centre and Associated Earthworks and Vegetation Removal, and Change of Use of Fourteen (14) Private Education Accommodation Units to Eco Tourist Facility Units

Location: Lot 1 DP 1031848, 951 BROKEN HEAD ROAD, BROKEN HEAD 2481

I refer to your recent referral regarding an integrated Development Application (DA) proposed for the above location. Attached, please find the Department of Planning and Environment—Water's General Terms of Approval (GTA) for part of the proposed development requiring a Controlled Activity approval under the *Water Management Act 2000* (WM Act), as detailed in the subject DA.

Please note Council's statutory obligations under section 4.46 of the *Environmental Planning and Assessment Act 1979* (EPA Act) which requires consent, granted by a consent authority, to be consistent with the general terms of any approval proposed to be granted by the approval body.

If the proposed development is approved by Council, the department requests these GTA be included (in their entirety) in Council's development consent. Please also note the department requests notification:

- if any plans or documents are amended and these amendments significantly change the proposed development or result in additional works or activities (i) in the bed of any river, lake or estuary; (ii) on the banks of any river lake or estuary, (iii) on land within 40 metres of the highest bank of a river lake or estuary; or (iv) any excavation which interferes with an aquifer.

The Department of Planning and Environment—Water will ascertain from the notification if the amended plans require review of or variation/s to the GTA. This requirement applies even if the amendment is part of Council's proposed consent conditions and do not appear in the original documentation.

- if Council receives an application under s4.46 of the EPA Act to modify the development consent and the modifications change the proposed work or activities described in the original DA.
- of any legal challenge to the consent.

As the proposed work or activity cannot commence before the applicant applies for and obtains an approval, the department recommends the following condition be included in the development consent:

The attached GTA issued by the Department of Planning and Environment—Water do not constitute an approval under the *Water Management Act 2000*. The development consent holder must apply to the department for a Controlled Activity approval **after consent** has been issued by Council **and before** the commencement of any work or activity.

A completed application must be submitted to the department together with any required plans, documents, application fee and proof of Council's development consent. Finalisation of an approval can take up to eight (8) weeks from the date the application and all required supporting documentation is received.

Applications for controlled activity approval should be made to the department, by lodgement of a Controlled Activity Approval – New approval application on the NSW Planning Portal at: <https://www.planningportal.nsw.gov.au/>

The Department of Planning and Environment—Water requests that Council provide a copy of this letter to the development consent holder.

The Department of Planning and Environment—Water also requests a copy of the determination for this development application be provided by Council as required under section 4.47(6) the EPA Act.

Yours Sincerely

Miles R. Ellis

For
Jeremy Morice
Manager
Licensing and Approvals
Department of Planning and Environment—Water

General Terms of Approval

for proposed development requiring approval under s89,
90 or 91 of the Water Management Act 2000

Reference Number:	IDAS-2022-10095
Issue date of GTA:	2 September 2022
Type of Approval:	Controlled Activity
Location of work/activity:	Lot 1 DP 1031848, 951 BROKEN HEAD ROAD, BROKEN HEAD 2481
Waterfront Land:	First order watercourse
DA Number:	DA10.2021.170.1
LGA:	Byron Shire Council

The GTA issued by Department of Planning and Environment—Water do not constitute an approval under the *Water Management Act 2000*. The development consent holder must apply to the Department of Planning and Environment—Water for the relevant approval **after development consent** has been issued by Council **and before** the commencement of any work or activity.

Condition Number	Details
TC-G001	Before commencing any proposed controlled activity on waterfront land, an application must be submitted to Department of Planning and Environment—Water, and obtained, for a controlled activity approval under the Water Management Act 2000.
TC-G004	<p>A. This General Terms of Approval (GTA) only applies to the proposed controlled activity described in the plans and associated documents found in Schedule 1, relating to Development Application DA10.2021.170.1 provided by Council to Department of Planning and Environment—Water.</p> <p>B. Any amendments or modifications to the proposed controlled activity may render the GTA invalid. If the proposed controlled activity is amended or modified, Department of Planning and Environment—Water, must be notified in writing to determine if any variations to the GTA will be required.</p>
TC-G005	<p>A. The application for a controlled activity approval must include the following plan(s):</p> <ol style="list-style-type: none"> Site plans indicating the demarcation of waterfront land, designated riparian corridors, and identifying any areas of encroachments and offsets Detailed civil construction plans; Construction watercourse crossing design plans; Erosion and sediment control plans; Construction detailed drainage plans; Construction stormwater drainage outlet plan; Vegetation management plan; <p>B. The plan(s) must be prepared in accordance with Department of Planning and Environment—Water's guidelines located on the website https://www.dpie.nsw.gov.au/water/licensing-and-trade/approvals/controlled-activity-approvals/what/guidelines</p>

SCHEDULE 1

The plans and associated documentation listed in this schedule are referred to in general terms of approval (GTA) issued by Department of Planning and Environment—Water for integrated development associated with IDAS-2022-10095 as provided by Council:

- Second DA Amendment Report, prepared by Planners North, dated July 2022
- Site and Architectural Plans prepared by Harvey Graham Architects, Ref. HGA206 dated 29/07/2022
- Civil Engineering Plans prepared by GeoLink, dated 28/01/2021

SCHEDULE 5. INTEGRATED DEVELOPMENT GENERAL TERMS OF APPROVAL NSW RURAL FIRE SERVICE



NSW RURAL FIRE SERVICE

Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482

Your reference: (CNR-20640) 10.2021.170.1
Our reference: DA20210422001572-CL55-1

ATTENTION: Ivan Holland

Date: Tuesday 30 August 2022

Dear Sir/Madam,

Integrated Development Application
s100B - SFPP - Infill - Eco-Tourism Facility
LINNEAUS ESTATE 951 BROKEN HEAD ROAD BROKEN HEAD NSW 2481, 1//DP1031848

I refer to your correspondence dated 28/02/2022 seeking general terms of approval for the above Integrated Development Application.

The New South Wales Rural Fire Service (NSW RFS) has reviewed the submitted amended information. General Terms of Approval are now re-issued, under Division 4.8 of the *Environmental Planning and Assessment Act 1979*, and a Bush Fire Safety Authority, under section 100B of the *Rural Fires Act 1997*, are now issued subject to the following conditions.

Asset Protection Zones

Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities.

1. At the commencement of works and in perpetuity, the pink shaded area as shown on the APZ plan prepared by Harley Graham Architects dated 20/07/2022 Drawing reference "PRECINCT PLAN - APZ. Rev 14", (as attached to the amended Bushfire Assessment report addendum dated 25.7.22 Rev H) shall be managed, and maintained as an inner protection area to prevent the spread of a fire towards the buildings in accordance with Appendix 4 of Planning for Bush Fire Protection 2019 and the requirements of 'Standards for Asset Protection Zones' NSW RFS 2005. Trees nominated as shown in the aforementioned plan are permitted to remain with the APZ. It is noted the fuels beneath these trees are to consist only of mown grass or non-combustible material. In this regard a landscape plan and management plan are to be prepared and approved prior to the release of the construction certificate.

Construction Standards

Intent of measures: to provide suitable building design, construction and sufficient space to ensure that radiant heat levels do not exceed critical limits for firefighters and other emergency services personnel undertaking operations, including supporting or evacuating occupants.

1

Postal address

NSW Rural Fire Service
Locked Bag 17
GRANVILLE NSW 2142

Street address

NSW Rural Fire Service
4 Murray Rose Ave
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555
F (02) 8741 5550
www.rfs.nsw.gov.au



2. Building construction requirements are as follows:-

- The proposed reception building (CB.02) is to be constructed to BAL 29 AS 3959-2018 plus Section 7.5 Planning for Bush Fire Protection 2019;
- The WC Facilities building CB.04 is to be constructed in accordance with BAL 19 AS 3959-2018 plus Section 7.5 Planning for Bushfire Protection 2019. Gutter guards are to be provided and comply with AS 3959-2018;
- The Food Offering building CB.04 is to be constructed in accordance with BAL 12.5 AS 3959-2018 plus Section 7.5 Planning for Bushfire Protection 2019. Gutter guards are to be provided and comply with AS 3959-2018;
- The eco-tourism on-site refuge building (CB.03), and Cabins B.8 to B.12 are to be constructed to BAL 12.5 AS 3959-2018 plus Section 7.5 Planning for Bush Fire Protection 2019. Gutter guards must be provided to all buildings and comply with AS 3959-2018 - Construction of Buildings in Bushfire Prone Areas;
- Cabins B.1 – B.7 and B.12 are to be constructed to BAL 29 AS 3959-2018 plus Section 7.5 Planning for Bush Fire Protection 2019. Gutter guards must be provided to all buildings and comply with AS 3959-2018 - Construction of Buildings in Bushfire Prone Areas; and
- Gutter guards must be provided to all proposed buildings and comply with AS 3959-2018 - Construction of Buildings in Bushfire Prone Areas. Walkways within the asset protection zone of building CB.02 are to be completely constructed of non-combustible material.

Access - Internal Roads

Intent of measures: to provide safe operational access for emergency services personnel in suppressing a bush fire while residents are accessing or egressing an area.

3. The access from the entry to the property to the proposed refuge building is to comply with the acceptable solutions of Table 6.8b Planning for Bush Fire Protection 2019 with exception to the following –

- a) Only one property access is required;
- b) The existing sealed width of the property access road may remain provided an unobstructed carriageway width of minimum 5.5m is achieved throughout. Passing bays are required for a width of 6m over a 20m length every 200m (approximately) along the road. These passing bays are to be sealed;
- c) The bridge to the east of building CB.02 proposed to form part of the trafficable pathway providing access to the evacuation building CB.03 is to comply with Table 6.8b Planning for Bush Fire Protection 2019 relating to load capacity;
- d) Reductions in carriageway widths are permitted to 3.5m over a maximum 30m distance. This will cater for the culvert and entry locations identified in the traffic report prepared by Geolink, UPR 3080-1069, issue 3, dated 20/01/2021.
- e) The property access road is to comply with plans prepared by GeoLINK's Illustration SK-BF01v4 and 03v4. The pedestrian pathways provided to the proposed cabins to be located as shown on the drawing prepared by GeoLINK's Illustration SK-BF03v4 and the APZ plan prepared by Harley Graham Architects dated 20/07/2022 Drawing reference "PRECINCT PLAN - APZ. Rev 14
- f) All pedestrian pathways are to comply with the relevant legislation, codes and standards applicable to ensure safe access and egress for occupants and fire fighters.

4. All pedestrian pathways to the evacuation buildings associated with cabins for people with disabilities (north precinct) shall comply with AS 1428.1-2009 - Design for Access and Mobility - General Requirements for Access - New Building Work and relevant clauses of the Building Code of Australia 2019. Should a performance solution be proposed for access to the cabin for people with disabilities then bushfire evacuation will need to be considered and incorporated in the Emergency Evacuation Plan and Procedure.

Water and Utility Services

Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.



5. The existing and proposed fire hydrant system is to provide coverage of all buildings, with pressure and flows in accordance with AS 2419.1-2005 - Fire Hydrant Installations - System Design, Installation and Commissioning and comply with Table 6.8(b)(c) Planning for Bush Fire Protection 2019 - Ecotourism. The fire-fighting capacity is nominated at 90KL from a static supply. Full design details and design certification is required by a person deemed by the applicant and Byron Shire Council as a Competent Fire Safety Practitioner (CFSP). The design is to nominate the maintenance requirements for the system with the design and maintenance requirements included on the Fire Safety Schedule.

6. A minimum 10 000L non-combustible tank with compliant NSW RFS storz fitting(s) is to be provided to the depot building and accessible as shown in the plans prepared by GeoLINK's Illustration SK-BF01v4 and 03v4. It is recommended that a minimum 5hp or 3kW petrol or diesel fire fighter pump be provided (no electric pumps) and shielded against bush fire attack. An associated hose and reel for firefighting is to be connected to the pump and shall be 19mm internal diameter. The fire hose reel is to be constructed in accordance with AS/NZS 1221:1997 - Fire hose reels and installed in accordance with the relevant clauses of AS 2441:2005 - Installation of fire hose reels. A designer is to nominate the maintenance requirements for the system with the design and maintenance requirements included on the Fire Safety Schedule.

7. Fire hose reels for firefighting are to be provided for the refuge building, WC Facilities and food outlet building be connected to the existing water supply system. The size of the fire hose shall be a minimum 19mm internal diameter. The fire hose reels are to be constructed in accordance with AS/NZS 1221:1997 - Fire hose reels and installed in accordance with the relevant clauses of AS 2441:2005 - Installation of fire hose reels.

8. Electricity and gas services shall comply with Table 6.8c Planning for Bush Fire Protection 2019.

Landscaping Assessment

Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.

9. Landscaping is to comply with the requirements of Appendix 4 Planning for Bush Fire Protection 2019.

Emergency and Evacuation Planning Assessment

Intent of measures: to provide suitable emergency and evacuation arrangements for occupants of SFPP developments.

10. An Emergency Evacuation Plan (EEP) is to be prepared and approved by the consent authority prior to occupation of the proposed development and is to be referenced in the Fire Safety Schedule associated with the Construction Certificate.

11. A traffic management report is to be prepared by a competent person adequately addressing the following-

- a. The amount of traffic likely to be generated during an emergency evacuation;
- b. The capacity of the broader road network to facilitate safe emergency evacuation;
- c. Limitations/constraints inherent in the road system; and
- d. Management of potential traffic conflicts (such as emergency vehicles versus evacuating members of the public).

12. A Bush Fire Management Plan (BFMP) to be prepared detailing all approved Bushfire Protection Measures (BPM) and approved prior to the issue of a Construction Certificate. The BFMP must be referenced in the Fire Safety Schedule associated with the construction certificate, providing a mechanism to ensure on-going maintenance and management of the Bushfire Protection Measures associated with the Bush Fire Safety Authority.

General Advice – Consent Authority to Note



The asset protection zones (APZ) required as part of the development will encompass land that will be located within a riparian corridor / area. Ecological management of the riparian area may conflict with that required for the APZs. In this regard the applicant will need to liaise with the relevant authority to ensure management requirements do not conflict with those required for the APZs by the NSW RFS.

The NSW Rural Fire Service recognises that the application adopts the eco-tourism provisions of *Planning for Bush Fire Protection 2019*. As such, construction standards and asset protection zones may be insufficient to protect life and property in the event of a bush fire impacting the eco-tourism camping tents. Emergency and evacuation procedures are relied upon for the safety of occupants.

This letter is in response to an assessment of the application based on the submitted further information and supersedes our previous general terms of approval dated 27/09/2021.

For any queries regarding this correspondence, please contact Alan Bawden on 1300 NSW RFS.

Yours sincerely,

Ivan Perkins
Manager Planning & Environment Services
Built & Natural Environment



NSW RURAL FIRE SERVICE

BUSH FIRE SAFETY AUTHORITY

SFPP - Infill - Eco-Tourism Facility

LINNEAUS ESTATE 951 BROKEN HEAD ROAD BROKEN HEAD NSW 2481, 1//DP1031848

RFS Reference: DA20210422001572-CL55-1

Your Reference: (CNR-20640) 10.2021.170.1

This Bush Fire Safety Authority is issued on behalf of the Commissioner of the NSW Rural Fire Service under s100b of the Rural Fires Act (1997) subject to the attached General Terms of Approval.

This authority supersedes the previous Bush Fire Safety Authority DA20210422001572-Original-1 issued on 27/09/2021 and confirms that, subject to the attached reissued General Terms of Approval being met, the proposed development will meet the NSW Rural Fire Service requirements for Bush Fire Safety under *s100b of the Rural Fires Act 1997*.

Ivan Perkins

Manager Planning & Environment Services
Built & Natural Environment

Tuesday 30 August 2022

SCHEDULE 6. NOTES

Construction Certificate required:

This development consent is issued under the Environmental Planning and Assessment Act 1979 and does not relate to structural aspects or specifications of the building under the Building Code of

Australia. All buildings and alterations require the issue of a Construction Certificate prior to works commencing. Application forms are available from the customer services counter or Council's website www.byron.nsw.gov.au

Principal Certifying Authority:

Work must not commence until the applicant has:-

- a. appointed a Principal Certifying Authority (if the Council is not the PCA); and
- b. given Council at least two days notice of the intention to commence the erection of the building. Notice must be given by using the prescribed 'Form 7'.
- c. notified the Principal Certifying Authority of the Compliance with Part 6 of the Home Building Act 1989.

Occupation Certificate required:

The building must not be occupied until the Principal Certifying Authority has issued an Occupation Certificate.

Protection of the Environment Operations Act 1997:

It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ("on-the-spot fine") or prosecution.

Penalties apply for failure to comply with development consents

Failure to comply with conditions of development consent may lead to an on the spot fine being issued pursuant to section 4.2(1) of the Environmental Planning & Assessment Act 1979 or prosecution pursuant to section 9.50 of the Environmental Planning & Assessment Act 1979.

Plumbing Standards and requirements.

All Plumbing, Water Supply, Sewerage and Stormwater Works shall be installed in accordance with the *Local Government Act 1993*, Plumbers Code of Australia and AS/NZS 3500 Parts 0-5, the approved plans (any notations on those plans) and the approved specifications. Any plumbing inspections required under a Section 68 Approval are to occur in accordance with that approval.

Enclosed public places (smoke-free environment)

Environment Act 2000 and the *Smoke-Free Environment Regulation 2000* and the guidelines in the Regulation for determining what an enclosed public place is. Enquiries may be directed to the NSW Department of Health. The legislation may be viewed on:

<http://www.legislation.nsw.gov.au/maintop/scanact/inforce/NONE/0>

Swimming pool discharge (reticulated systems)

Swimming pool waste - irrespective of the filtering system is to be disposed into the property's house drainage - sewerage system via an overflow relief gully with a 100mm visible air gap in accordance with AS/NZS 3500.2, Section 10.9 & Figure 10.2.

This activity is now an exempt activity and does not require approval under Section 68 of the Local Government Act.

If, however, site conditions prevent discharge through the existing gully and a new gully is required, this activity will require an approval under S68 before this work can commence.

Note also that this activity must be carried out by a licensed plumber.

Relics Provisions- Advice

In relation to the exposure of relics, the *Heritage Act 1977* requires that if:

- a) a relic is suspected, or there are reasonable grounds to suspect a relic in ground, that is likely to be disturbed damaged or destroyed by excavation; and/or

- b) any relic is discovered during excavation that will be disturbed, damaged or destroyed by further excavation;

Those responsible for the discovery must notify nominated management personnel who will in turn notify the Heritage Council of New South Wales or its delegate, the Office of Environment and Heritage, NSW Heritage Branch, and suspend work that might have the effect of disturbing, damaging or destroying such relic until the requirements of the NSW Heritage Council have been satisfied (ss139, 146).

Essential Energy - Advice

- 6. If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment.
- 7. Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with.
- 8. In addition, Essential Energy's records indicate there is electricity infrastructure located within the property and within close proximity of the property. Any activities within these locations must be undertaken in accordance with *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*. Approval may be required from Essential Energy should activities within the property encroach on the electricity infrastructure.
- 9. Prior to carrying out any works, a "Dial Before You Dig" enquiry should be undertaken in accordance with the requirements of *Part 5E (Protection of Underground Electricity Power Lines)* of the *Electricity Supply Act 1995* (NSW).
- 10. Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure. These include the *Code of Practice – Work near Overhead Power Lines/Underground Assets*.