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**DA 2011/506.3 - 440 South Ballina Beach Road,
 South Ballina**

ballina shire council
 geographical information system

Project No: DA194 / MGA zone 95
 Date: 16/08/2016

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To: Mr Andrew Smith

Acting Development and Environment Health Manager

6 June 2016

Ballina Shire Council

By email to: council@ballina.nsw.gov.au

Dear Andrew,

Re s.96(1A) Modification Application of DA 2011/506, Lot 1 DP 1186674 & Lot 1712 DP 597523, 440 South Ballina Beach Road, South Ballina NSW - Ballina Beach Village.

This is in response to the letter dated 16 May 2016 sent to us by Council's Mr Rod Willis, wherein he:

1. Nominates you as the person we should communicate with;
2. Describes his visit on the same day as the letter to our site along with Council's Environmental Officer Mr Ian Gaskell (the "Visit");
3. Deals with other issues related to the DA and the related s96 modification application.

Our recollection of events from that meeting, and our response to the letter of Mr Willis (as detailed below), arise from the extensive notes of the conversations we prepared during and shortly following the Visit.

This letter together with our earlier correspondences, addresses the issues raised during the Visit together with the other conditions of consent that are the subject of our modification application with a view to finalising the amended DA.

A. Bush fire protection and proposed plantings.

1. Mr Willis's letter of 21 December 2015 clearly recognised the inherent conflict between bushfire control and the additional plantings required by the consent. While we might not agree with everything which was suggested in that letter, we understood that the plantings suggested by Mr Willis in his letter of 21 December were sufficient to address all of those conditions in the consent that require planting, landscaping and otherwise the "revegetation" of parts of the site. Mr Willis's letter proposed two plantings only:
 - a. One for one replacement of trees (presumably of dead or dying) trees
 - b. 44 trees to be added within the southern heathland portion of the site
2. Accordingly we were surprised that during the Visit Mr Gaskell proposed several times that most if not all other plantings required by the conditions of consent (that is all of the Conditions 12 and 14) should be carried out. He appeared to be unaware that Condition 12 had been recommended for removal (except the replacement of dead or dying trees) by both the RFS and the fire consultant Mr Barrie Eagle in multiple reports (as mandated by Condition 75) and letters in Council's possession. Neither Mr Willis nor Mr Gaskell appeared to be taking into account of the RFS requirement that the whole of our land was to be treated as an Inner Protection Area (IPA). This is also noted in the NPWS Richmond River Nature Reserve Plan of Management.

3. During the Visit we had agreed to consider Council's previously stated advice contained in Mr Willis's letter to us dated 21 December 2015, viz:
 - a. "one for one replacement" of "any unhealthy trees within the western portion suitable for removal to allow their replacement by She Oaks or the buffer plantings"
 - b. Planting of additional 44 Black She Oak (feed) trees in Condition 14.

We make the following comments with regard to that advice in respect to each of the points above, viz:

- a. We do not agree (and did not agree during the Visit) with Mr Gaskell's view that all such plantings (including around the already existing feed trees, should have full fencing at 'many meters' diameter around the original tree, with extensive native bushy plantings within such fencing), and also allowing "natural regrowth" to occur within each fenced area.

This would clearly violate both the RFS and Mr Eadie's advices, as well as the RFS "Planning for Bush Fire Protection 2006". It also appears to be inconsistent with the plantings suggested in Mr Willis' letter of 21 December 2015. It is also inconsistent with Condition 102 wherein "Landscaping to the site is to comply with the principles of Appendix 5 of "Planning for Bush Fire Protection 2006".

Practically considered such unmaintained areas would form blocks of fire risk directly adjacent to the camping areas, including a fire "ladder" effect.

- b. Mr Gaskell also requested during the Visit that we plant feed trees on land belonging to both NPWS and the Lands Department adjoining our land, including areas that had been specifically cleared by both those bodies to minimise the risk of fire spreading to our property from their properties.

We clearly cannot agree to such plantings. Not only would such plantings amount to trespass, it would create an additional fire load in those areas and put our park, our guests and the surrounding environment at an increased risk of bushfire.

- c. Neither Mr Gaskell nor Mr Willis responded to our assertions that Black Sheoaks are endemic to the area, as confirmed to us by other Council staff.
- d. During the Visit Mr Willis rejected our suggestion that feed trees be planted along the adjacent Council South Ballina Beach Road reserve (being plantings that we offered to undertake to satisfy the request to plant 44 black sheoaks).

Mr Willis stated that such activity "may prevent future road widening". This seems to us counterintuitive, as some identified feed trees (amongst other species) have already been growing on the road reserve, the trees could be planted at fire safe intervals near our boundary fence and the road is very unlikely to be widened in the foreseeable future. We are the last private property along the road that continues beyond our entrance to the dead end at the NPWS car park, with quite modest traffic to both.

- e. We make the further observation that Council is unwilling to accept planting of *Allocasuarina littoralis* (She Oaks) on any of its own lands - but has little hesitation directing us to conduct such planting on our land. In addition to any other issues we have raised, planting on our land (which we expect will be jealously watched

over and guarded by Council) reduces the amount of land that is available for us to pursue the permitted use - that of the caravan park. If Council believes it is so important to achieve particular environmental outcomes in this part of Ballina, then it should acquire the land and pursue its objectives, rather than impose what are unlawful conditions on our consent.

- f. Mr Willis's letter dated 21 December 2015 suggested we "liaise" with Mr Eadie regarding these matters and "...advise if these measures would assist in meeting the revised NSW RFS requirements". Accordingly we sought such advice and received it from Mr Eadie in a letter dated 16 February 2016 which was forwarded to Mr Willis. In this letter Mr Eadie recommends and concludes that Condition 14 be removed, while the "one for one" tree replacement plantings were suitable as long as the RFS requirements and guidelines were obeyed.

During the Visit we clearly expressed the view that we were willing to consider some additional feed tree planting (for the replacement of dead or dying ones). However we cannot agree to violate any RFS advice & guidelines, or any of the written expert advice given to us by Mr Eadie. Modern law clearly mandates duty of care and risk management by owners, local authorities and fire and emergency services who all must be proactive in identifying, preventing and warning of risk (especially in relation to tourism facilities where the dangers are multiplied). By insisting on plantings contrary to RFS and expert advice here Council is apparently not subscribing to such standards.

For this reason, we are not willing to consider additional feed tree plantings (except for the replacement of dead or dying trees and new plantings on Council's road reserve). If we were to accept Council's position as expressed during the Visit (and therefore violate the RFS advice and guidelines, and the written expert advice given to us by Mr Eadie) it would give rise to legal liability for both ourselves and for Council. Our considered view is that not only would Council's additional planting jeopardise our insurance cover, but there could also be criminal charges flowing from fires after such actions. Please note the advice of our insurance broker Mr Rodney Freeman of Eagle Insurance Brokers. Accordingly, and for the avoidance of doubt, the following are parameters that we understand should be followed for any and all plantings:

- a. Maximum canopy cover of 15% taken overall and in clusters
- b. No beds of flammable shrubs
- c. Understorey to be maintained by mowing
- d. Lower tree limbs to be removed to height of 2m
- e. No multi meter buffer fencing (there should only be sufficient usual protection provided for seedlings and young trees)
- f. Canopy further than 2m away from any structure.

Having regard to the matters noted above, and particularly what must be the proper assessment and weighing of fire risk, Council should acknowledge that Conditions 12, 13, 14, 16, 67, 96 and 103 of the Consent are satisfied by the amendments proposed in the modification application, noting particularly that the VMP required by condition 103 will be prepared in accordance with the matters noted here and in our application. Those matters (obviously) include the report prepared by Barry Eadie Consulting. In circumstances where the requirement of the condition (for example condition 14) cannot be met (because it would breach the fire safety requirements of the Barry Eadie Consulting report) the condition should be deleted or expressed to be subject to the VMP required by condition 103.

In summary we propose that:

Condition 12 to be modified as follows -

12c, 12 d, 12e be deleted in their current form and each replaced by a statement "This condition will be satisfied by the one for one replacement of dead or dying trees by *Allocasuarina littoralis* plantings subject to the VMP and RFS advice and guidelines"

Condition 14 to be modified as follows:

"Planting of *Allocasuarina littoralis* on the Council road reserve adjacent to the northern fenced boundary of the site subject to the VMP and RFS advice and guidelines"

Condition 102 to be modified by adding the following:

"... and specific advice as provided by the RFS to Council dated 2 November 2015, such that the following parameters are satisfied:

- a. Maximum canopy cover of 15% taken overall and in clusters
- b. No beds of flammable shrubs
- c. Understory to be maintained by mowing
- d. Lower tree limbs to be removed to height of 2m
- e. No multi meter buffer fencing (there should only be sufficient usual protection provided for seedlings and young trees)
- f. Tree canopy to be further than 2m away from any structure.

The related condition 17 has been carried out and should be noted as satisfied.

4. Other related conditions listed in Mr Willis's letter dated 16 May 2016, that is 56, 59(b) and 75, have been thoroughly covered in Mr Eadie's Report dated 23 August 2015 and forwarded to Council, are listed therein as satisfied, and we request that they be acknowledged as such.
5. Mr Eadie's report also confirms that conditions 58, all of 59, 60, 61, 62, 63, 64, 73, 77, 78, 79, 96, 101, 102 all are satisfied, and so should be so acknowledged. Otherwise and consistent with the observations above, in circumstances where the requirement of the condition or part thereof (for example conditions 58, 96) cannot be met (because it would breach the fire safety requirements of RFS or the Eadie report) the condition should be deleted or expressed to be subject to the VMP required by condition 103 and in accordance with Condition 102.

B. On Site Sewage Management System ("OSSMS")

1. We note Mr Willis's letter of 16 May 2015 that states the "...conditions requiring the appraisal and provision of an operational plan..." for the OSSMS have "...been largely met". We say that the conditions have been entirely met. In fact the April 2016 OSSMS report (mandated by condition 99) by Dr John Childs as submitted to Council clearly concludes that the relevant consent conditions 76 and 99 along with condition 8 of the "Certificate of Approval to Operate a System of Sewage Management" number 1165 dated 20 November 2015, have been satisfied. This is the scope of the conditions of consent: nothing further can be required.

2. Notwithstanding our position on this we are however very concerned that the matter is further delayed by Council's current referral to the NSW Department of Primary Industries – Fisheries regarding the potential effects of the OSSMS on the oyster beds in the Richmond River (as described in Council's Mr John Bruce's email to Dr Childs and us dated 12 May 2016). Dr Childs addresses this in his attached response. We note:
 - a. the evaluation of the OSSMS has now been going on since 2011, with reports and responses supplied by our consultants to Council as requested.
 - b. there is no evidence of ANY pollution of aquifers or waterways by our OSSMS.
 - c. the issue was covered explicitly in Dr Childs April 16 report.

We can only conclude that this is an unfortunate and unwarranted delay by Council specifically to further frustrate the determination of the DA. It is certainly an additional requirement that does not arise from the conditions of consent. Without limitation to what we say on this issue the additional review now being undertaken by the DPI is unlawful.

We trust that, with the information in the attached Dr Childs response, conditions 76 and 99 are accepted and confirmed as satisfied, and condition 100 deleted as agreed in Mr Willis's letter to us dated 8 October 2015.

C. Other Consent Issues

1. We agree with Mr Willis's letter of 16 May 2016 that we requested that conditions 11 and 45 be finalised. However not by deletion as that letter states. We make the following comments about these two conditions in support of our application to modify the consent:
 - a. Condition 11 – fox baiting covenant. We have requested through the s96 application that the condition be modified. As the condition stands without the modification we make the following comments:
 - i. This attempts to bind us with a third party viz NPWS-OEH, ostensibly at their request.
 - ii. We have previously supplied to Council an email from Don Arnold, Regional Manager, North East Region, Regional Operations Group, Office of Environment and Heritage dated 17 Dec 2014 which states that they have made no such request.
 - iii. We have been informed by the local NPWS office that they do not enter into agreements concerning land which is not under their control, thus they cannot be a party to the proposed covenant.
 - iv. Mr Willis's letter of 8 October 2015 refers to this condition as having its foundation on the current DCP (2012). Such restrictions within the DCP rest on areas in South Ballina being zoned E2 and E3. At this time these zones are not valid within Ballina Shire having been specifically deferred. The EP&A Act was specifically amended in 2012 to ensure that DCP's are wholly consistent with LEP's,
 - v. Mr Willis's letter of 8 October 2015 further refers to other properties in South Ballina having this restriction (covenant) applied by condition, including in a DA approved in 2014 by the NSW L&E Court. Our understanding is that this restrictive condition has not been the subject of a specific challenge at L&E Court and was included as a matter of and along with other consent orders and therefore is challengeable.

Accordingly we request that this condition be modified as described in our s96 application.

- b. Condition 45 – the sealing of the loop road in the western camping area.
 - i. This road, along with all the roads in that area, has been constructed to an all weather, hardened, clay and gravel standard of many Council country roads.
 - ii. We have supplied a letter to Mr Willis to that effect from the contracting company that constructed the roads.
 - iii. Mr Eadie in his bush fire report noted under Conditions 58 (b) and 64 that the site complies with RFS requirements of access for a Category 1 bush fire tanker and that the roads comply with section 4.2.7 of "Planning for Bush Fire Protection (2006)".
 - iv. There appears to be no good environmental, practical or planning reason to compel the sealing (bitumen) of this road. It is a part of the park that is intended to give campers a "wilderness" experience. A tarred road is contrary to this experience.

Accordingly we request that this condition be modified as described in our s96 application.

- 2. Conditions 5, 6, 33, 65, 69, 75A, 76B and 80 have all been fulfilled and so noted to Council as each has been completed. These conditions are therefore satisfied.

Specifically:

Condition 5: the signage has been moved onto our land.

Condition 6: all information requested has been supplied and Council agreed that the condition is satisfied.

Condition 33: the disabled car parking has been covered and an occupation certificate has been supplied to Council.

Condition 65: new amenities occupation certificate has been supplied to Council

Condition 69: water supply management plan has been supplied to Council

Condition 76A: food areas flooring and shelving has been carried out and inspected by Council

Condition 76B: premises are registered as cafe

Condition 80: lighting has been installed and details supplied to Council

- 3. The remaining conditions have either been satisfied or are to be deferred, as listed in detail in the s96 application dated 3 July 2015.

In conclusion, given the length of time that this very large number of issues has been considered, all Council enquiries having been addressed and all applicable consent conditions being in a state of compliance, and the s96 application is taken into account along with Mr Eadie's and Dr Childs's reports, we request that the DA, as modified, be promptly approved to give certainty in operating our business. We look forward to your prompt advice on this matter.



Bernard and Rikki Grinberg

Directors, Merkat Investments Pty Ltd

McCartney Young Lawyers

Directors: Michelle McCartney and Michael Young

Our Ref: MY:20140406
Your Ref:

11 August 2016

Mr Rod Willis
Group Manager
Development and Environmental Health
Ballina Shire Council

(And for the attention of Mr Anthony Peters)

Dear Mr Willis

**Modification to development consent 2011/506
Ballina Beach Village – 440 South Ballina Road, South Ballina**

I refer to Council's letter of 3 August 2016 addressed to Merkat Investments and marked for the attention of Bernard Grinberg.

As you are aware I act for Merkat Investments and take my instructions from Bernard and Rikki Grinberg.

An application has been lodged with Council by my client seeking to modify certain conditions of the consent that permits the development and operation of "Ballina Beach Village".

By reference to your letter of 3 August to my client I understand agreement has not been reached with respect to the following conditions of the consent, being conditions the subject of the modification application:

1. Striking a balance between bushfire and ecology issues – that is, what additional planting can practically be undertaken on the development site while avoiding increased bushfire risk (conditions 12 and 14 and related conditions 13, 16, 67, 96, 102 and 103).
2. A covenant to be placed on the land with respect to fox baiting (condition 11).
3. Sealing of the loop road (condition 45).

Other than the issues identified above, you state "*all other conditions are not currently in contention*" and my client therefore understands that the remaining conditions the subject of the modification application will be amended in the manner sought by my



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BUSINESS LAW
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LOCAL GOVERNMENT
& PLANNING LAW

clients, and all other conditions of consent have been satisfied or agreed to not be applicable

The conditions identified in paragraphs 1 to 3 above have been the subject of extensive consultation and discussion between representatives of Council and Remart and Rikki Grinberg. Those discussions have been informed by expert advice obtained from relevant consultants as well as the RFS.

While it appears that agreement has been reached with respect to the other conditions that are the subject of the modification application, and notwithstanding the extensive consultation, the parties remain in disagreement about the conditions identified in paragraphs 1 to 3 above.

My client has been advised that Council's proposed planting requirements as outlined in your letter of 3 August 2016 would cause the site to be non-compliant with the requirements of the RFS and "Planning for Bush Fire Protection 2006" and thus be unlawful. Carrying out such Council's proposals would make my client's public liability insurance position untenable.

My client's position on conditions 11 and 45 has been expressed several times to Council, most recently in the letter to Andrew Smith dated 6 June 2016. My client considers Council's positions on these conditions as unnecessary and unreasonable in the circumstances.

Given the time that has elapsed since the modification application was lodged, and the extensive discussions to date, my client queries whether any further discussion is likely to lead to a resolution of these outstanding issues.

My client therefore declines the recent invitation from Council to engage in further discussion about these matters.

My client requests that Council now proceed to determine the modification application. Would you be so kind as to forward to my client, as soon as it is available, the report that will be presented to the Council at the meeting (presumably 25 August 2016) at which the modification application will be determined?

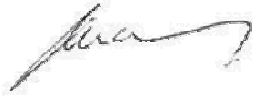
It is also timely to identify the additional following matters.

- A. As you are aware Council elections will be held on 10 September 2016.
- B. I expect that Council staff will soon be focused on the election and then subsequently the new councillors.
- C. My client expects that, regardless of the determination of the modification application, the entire consent may not be agreed to be implemented before the end of this calendar year. That is, my client will not be in a position to apply for a final occupation certificate and a "long term" approval under the *Local Government Act 1993* (LG Act).
- D. Council has previously issued an Interim occupation certificate, and "one year" approval under the LG Act, to allow my client to lawfully operate particularly in the summer "peak period".
- E. My client respectfully asks that Council again issue an Interim occupation certificate, and "one year" approval under the LG Act, as the current certificate and approval will expire shortly.

Would you please let either me or my client know whether Council is prepared to issue the certificate and approval as identified above?

We look forward to your response to the matters raised in this letter.

Yours faithfully



Michael Young
Direct Line: 02 6683 5560
michael@my-lawyers.com.au

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Facsimile: 8741 5433



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

Your Ref: DA 2011/506.3
Our Ref: D15/2785
DA15092298641 WS

ATTENTION: Anthony Peters

2 November 2015

Dear Mr Peters

Integrated Development for 1/1186674 & 1712/597523 - 440 South Ballina Beach Road South Ballina 2478

I refer to your letter dated 8 September 2015 seeking general terms of approval for the above Integrated Development in accordance with section 96 of the 'Environmental Planning and Assessment Act 1979'.

This response is to be deemed a bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997' and is issued subject to the following numbered conditions:

1. The proposed development is to comply with the plan titled Proposed Staged Caravan Park Additions and Alteration to Create New Lots and Amenities, prepared by Design Evolutions, plan number SK13 P1 and dated 17 May 2013, except where modified by conditions of this Bush Fire Safety Authority.

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

2. At the commencement of building works and in perpetuity the property around existing sites, amenities, offices and residence, to a distance of 10 metres, shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2008' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
3. At the commencement of building works and in perpetuity the property around new sites shall be managed as follows:

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- North to the boundary as an Inner Protection Area.
- East for a distance of 35 metres as an Inner Protection Area.
- South for a distance of 35 metres as an Inner Protection Area. This asset protection zone is in accord with the western portion of the "35 metre APZ line" identified in the plan titled Proposed Staged Caravan Park Additions and Alteration to Create New Lots and Amenities, prepared by Design Evolutions, plan number SK13 P1 and dated 17 May 2013.
- West to the boundary as an Inner Protection Area.

Requirements for an Inner Protection Area are outlined within section 4.1.3 and appendix 5 of 'Planning for Bush Fire Protection 2006' (PBP) and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

4. To allow for emergency service personnel and residents to undertake property protection activities, a defensible space that permits unobstructed pedestrian access is to be provided around the proposed amenities/recreation building.

Asset Protection Zones

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

5. The short term camping (tent) sites, located adjacent to the internal access road running along the Western boundary (from the North Western corner of the lot to the water treatment compound), are permitted within the required 45m APZ, so long as the following are provided in this area;
 - A defensible space, and
 - Access for a RFS, Category 1 bush fire tanker, and
 - Adequate water supply (See Condition No. 5)

Water and Utilities

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

6. In recognition that no Council "mains reticulated water supply" is available to the development, (it is noted that the electrically powered pumps servicing the caravan park water supply are not guaranteed in a fire event) a minimum of 20,000 litres of fire fighting water supply shall be provided for fire fighting purposes in a suitable area adjacent or near to the proposed recreation building. This supply could be provided from the existing large water supply tanks located in the compound area adjacent to the Western boundary. The fire fighting water supply shall be installed and maintained in the following manner:
 - a) Fire fighting water supply tank(s) shall be located not less than 5 metres and not more than 20 metres from the approved structure.

- b) A hardened ground surface for fire fighting truck access is to be constructed up to and within 4 metres of the fire fighting water supply.
- c) New above ground fire fighting water supply storage's are to be manufactured using non combustible material (concrete, metal, etc). Where existing fire fighting water supply storage's are constructed of combustible (polycarbonate, plastic, fibreglass, etc) materials, they shall be shielded from the impact of radiant heat and direct flame contact.
- d) Non combustible materials (concrete, metal, etc) will only be used to elevate or raise fire fighting water supply tank(s) above the natural ground level.
- e) A 65mm metal Storz outlet with a ball valve shall be fitted to any fire fighting water supply tank(s) and accessible for a fire fighting truck. The Storz outlet fitting shall not be located facing the hazard or the approved structure.
- f) The ball valve, pipes and tank penetration are adequate for full 50mm inner diameter water flow through the Storz fitting and are constructed of a metal material.
- g) All associated fittings to the fire fighting water supply tank(s) shall be non-combustible.
- h) Any below ground fire fighting water supply tank(s) constructed of combustible (polycarbonate, plastic, fibreglass, etc) materials shall be shielded from the impact of radiant heat and direct flame contact.
- i) Any fire fighting water supply tank(s) located below ground shall be clearly delineated to prevent vehicles being driven over the tank.
- j) All water supplies for fire fighting purposes shall be clearly signposted as a fire fighting water supply.
- k) Below ground fire fighting water supply tank(s) shall have an access hole measuring a minimum 200mm x 200mm to allow fire fighting trucks to access water direct from the tank.
- l) Fire fighting water supply tank(s) and associated fittings, located within 60 metres of a bushfire hazard and on the hazard side of an approved building, shall be provided with radiant heat shielding to protect the tank from bush fire impacts and maintain safe access to the water supply for fire fighters.
- m) A minimum 5hp or 3kW petrol or diesel powered pump shall be made available to the water supply. A 19mm (internal diameter) fire hose and reel shall be connected to the pump.
- n) Pumps are to be shielded from the direct impacts of bush fire.
- o) A Static Water Supply (SWS) sign shall be obtained from the local NSW Rural Fire Service (RFS) and positioned for ease of identification by RFS personnel and other users of the SWS. In this regard:
 - i. Markers must be fixed in a suitable location so as to be highly visible; and
 - ii. Markers should be positioned adjacent to the most appropriate access for the water supply.

Note: Below ground dedicated fire fighting water supply tank(s) is defined as that no part of the tanks(s) is to be located above natural ground level.

7. The two (2) "above ground" concrete water tanks, located adjacent to the existing amenities building and to the South West of the Office/Reception building, shall be provided with a 65mm Storz fitting to allow RFS vehicles access to fire fighting water in the event of a bush fire. The location and installation requirements of the Storz fitting are as per Condition No. 5 of this Bush Fire Safety Authority.

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following conditions shall apply:

8. Electricity and gas are to comply with sections 4.1.3 and 4.2.7 of 'Planning for Bush Fire Protection 2006'.

Access

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

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

Evacuation and Emergency Management

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

10. An emergency and evacuation plan addressing Section 4.2.7 of 'Planning for Bush Fire Protection 2006' shall be prepared for the caravan park, or the existing plan is to be amended to include considerations pertaining to the proposed new amenities/recreation building and increased caravan park area. A copy of the plan shall be provided to the consent authority prior to the issuing of an occupation certificate.

Design and Construction

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

11. Roofing shall be gutterless or guttering and valleys are to be screened to prevent the build up of flammable material. Any materials used shall be non-combustible.

Landscaping

12. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'. In this regard the following landscaping principles are to be incorporated into the development:
 - Suitable impervious areas being provided immediately surrounding the building such as courtyards, paths and driveways;

- Grassed areas/mowed lawns/ or ground cover plantings being provided in close proximity to the building;
- Restrict planting in the immediate vicinity of the building which may over time and if not properly maintained come in contact with the building;
- Maximum tree cover should be less than 30%, and maximum shrub cover less than 20%;
- Planting should not provide a continuous canopy to the building (i.e. trees or shrubs should be isolated or located in small clusters);
- When considering landscape species consideration needs to be given to estimated size of the plant at maturity;
- Avoid species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies;
- Use smooth bark species of trees species which generally do not carry a fire up the bark into the crown;
- Avoid planting of deciduous species that may increase fuel at surface/ ground level (i.e. leaf litter);
- Avoid climbing species to walls and pergolas;
- Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building;
- Locate combustible structures such as garden sheds, pergolas and materials such timber garden furniture way from the building; and
- Use of low flammability vegetation species.

General Advice – consent authority to note

- As the Storz fittings are required to be provided to water supply tanks in two public use areas of the caravan park, it is recommended that a "blanking cap" is provided. This cap may assist in slowing the deterioration of the rubber seal within the valve as well as assisting to prevent the misuse of the fire fighting water supply.
- The development is isolated and is provided with no reticulated water. The asset protection zones for the park are important for the occupants safety with other bush fire measures having been stipulated, bolstering the resilience of the development. However due to the environmental constraints the asset protection zones for the existing development have been reconsidered and reduced to 10 metres from structures and camping sites.
- A Vegetation Management Plan identifying maintenance that complies with Appendix 2 and Appendix 5 of 'Planning for Bush Fire Protection 2006' should be created.
- The camping use has been considered. Camping is noted in condition 4 of the BFSAs, whereby, camping is permitted within the asset protection zone, a defensible and truck trafficable space is to be provided to separate the camping from the bush fire prone vegetation.

- The unmanaged land to the Southern portion of the lot which is not affected by the development and the required asset protection zones should be considered for the new plantings. Additionally it is possible to replace existing vegetation in the developed portion of the site with Glossy Black Cockatoo feed trees and landscaping. However compliance with Appendix 2 and Appendix 5 of 'Planning for Bush Fire Protection 2006' must be maintained.

For any queries regarding this correspondence please contact Wayne Sketchley on 1300 NSW RFS.

Yours sincerely



Alan Bawden
Team Leader, Development Assessment & Planning

The RFS has made getting information easier. For general information on 'Planning for Bush Fire Protection, 2006', visit the RFS web page at www.rfs.nsw.gov.au and search under 'Planning for Bush Fire Protection, 2006'.



NSW RURAL FIRE SERVICE



RECORDS SCANNED
7 MAR 2016
Doc No
Batch No

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

Your reference DA 2011/506.3
Our reference D15/2785
DA15092298641WS

Attention: Anthony Peters

29 February 2015

Dear Mr Peters

Integrated Development for 1/1186674 & 1712/597523 - 440 South Ballina Beach Road South Ballina 2478

I refer to your letter dated 16 December 2016 seeking to modify the NSW Rural Fire Services (NSW RFS) Bush Fire Safety Authority (BFSA) dated 2 November 2015.

The NSW RFS has determined that the proposal does not seek to modify any conditions of the BFSA issued 2 November, 2015. The referral seeks support for a method of compliance to the Asset Protection Zone (APZ) conditioned. The Service is a Regulatory Authority and not a Certifying Authority and therefore how compliance is achieved is not up to the discretion or support of the Service.

The condition issued in the BFSA of 2 November 2015, affecting the Western portion of the site is as follows:

At the commencement of building works and in perpetuity the property around new sites shall be managed as follows:

- North to the boundary as an Inner Protection Area.
- East for a distance of 35 metres as an Inner Protection Area.
- South for a distance of 35 metres as an Inner Protection Area. This asset protection zone is in accord with the western portion of the "35 metre APZ line" identified in the

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plan titled Proposed Staged Caravan Park Additions and Alteration to Create New Lots and Amenities, prepared by Design Evolutions, plan number SK13 P1 and dated 17 May 2013.

- West to the boundary as an Inner Protection Area.

Requirements for an Inner Protection Area are outlined within section 4.1.3 and appendix 5 of 'Planning for Bush Fire Protection 2006' (PBP) and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Therefore the entire Western portion of the site is to be managed as an Inner Protection Area (IPA) as outlined in section 4.1.3 of 'Planning for Bush Fire Protection 2006'. Section 4.1.3 refers onto appendix 2 of 'Planning for Bush Fire Protection 2006'. Appendix 2 states the following;

An IPA should provide a tree canopy cover of less than 15% and should be located greater than 2 metres from any part of the roofline of a dwelling. Garden beds of flammable shrubs are not to be located under trees and should be no closer than 10 metres from an exposed window or door. Trees should have lower limbs removed up to a height of 2 metres above the ground.

Councils referral letter states the following;

"therefore the canopy spread did not exceed 15%?"

Hence compliance with regard to canopy cover is therefore achieved, is it not? The Service does not raise any concern with the proposed balance of bush fire requirements and ecological interests.

The BFS issued 2 November 2015 is applicable.

For any queries regarding this correspondence please contact Wayne Skatchley on 1300 NSW RFS.

Yours sincerely



Team Leader, Development Assessment & Planning

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