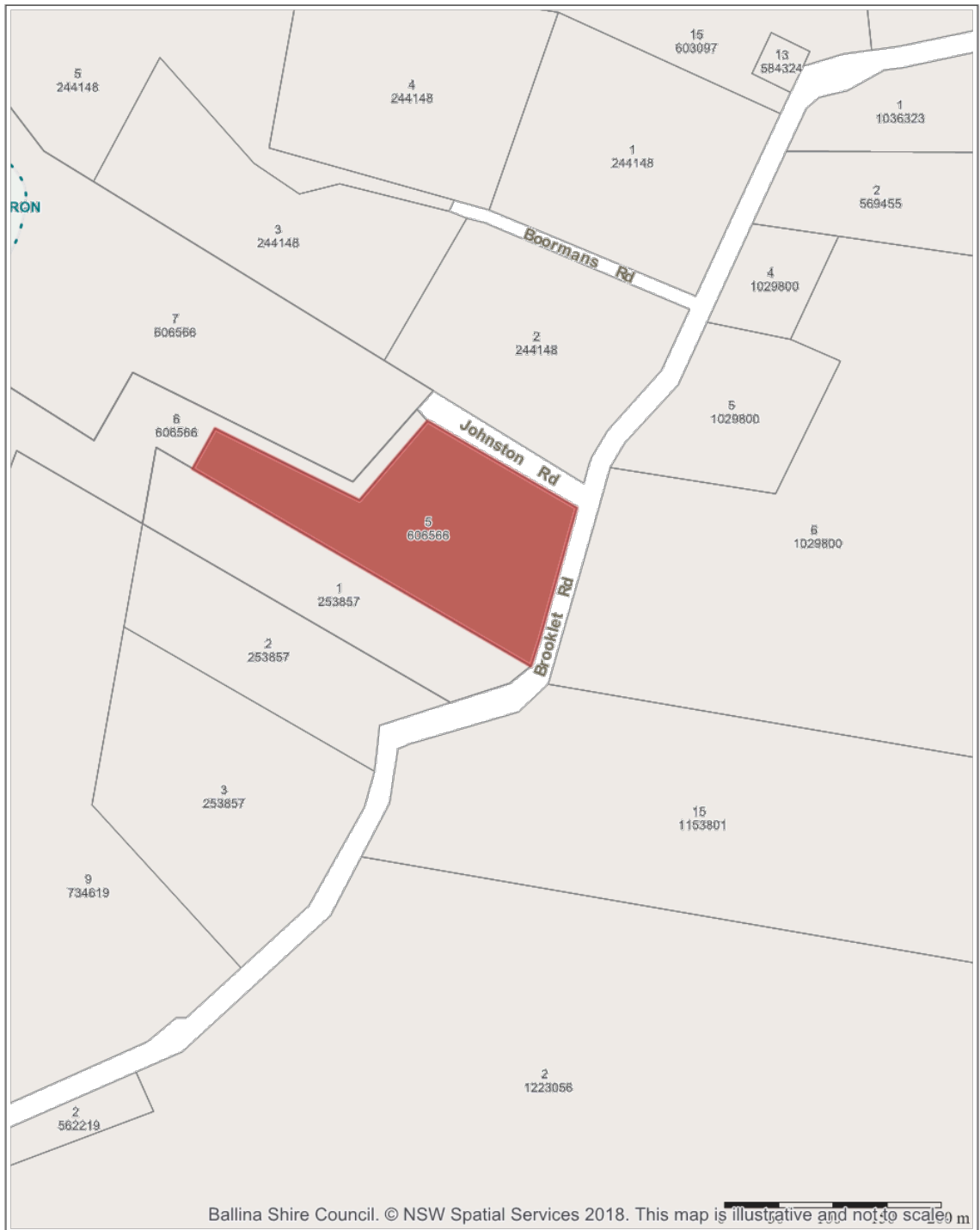


8.1 **DA 2017/662 - Temporary Land Use (Function Centre) - Newrybar.DOC**



Ballina Shire Council
 40 Cherry Street
 BALLINA NSW 2478
 PO Box 450
 BALLINA NSW 2478
 02 6686 4444
 council@ballina.nsw.gov.au
 www.ballina.nsw.gov.au

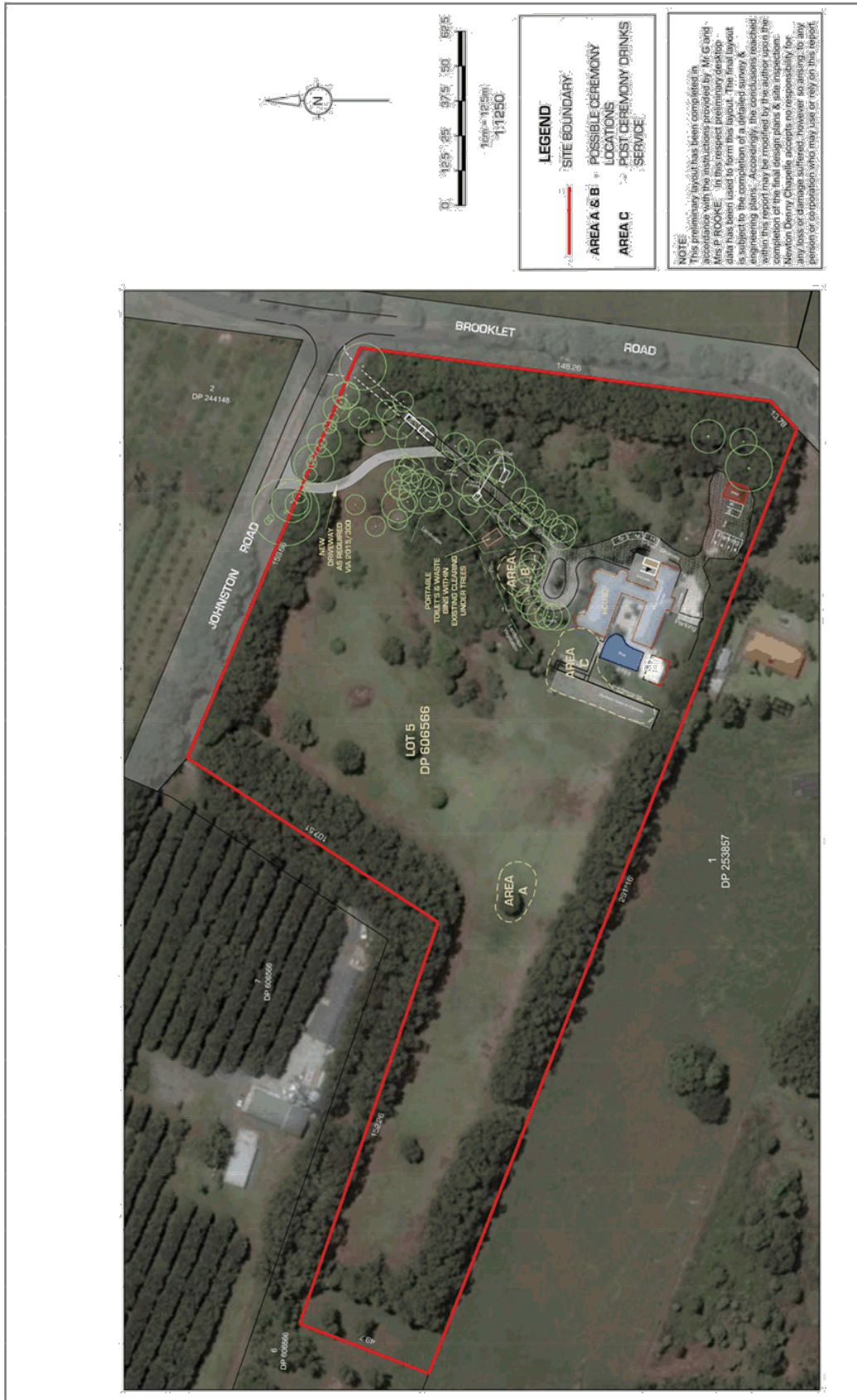


DA 2017/662 - Lot 5 DP 606566 - No. 1 Johnston Road, NEWRYBAR



Projection: GDA94 / MGA zone 56
 Date: 4/04/2018

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PROPOSED SITE LAYOUT - GENERAL

Newton Denny Charvelle
 11 Brooklet Road, Newrybar, NSW 2256
 Phone: 02 4322 1111
 Email: info@newtondenny.com.au

PROJECT INFORMATION

Project Name: **DA 2017/662 - Temporary Land Use (Function Centre) - Newrybar**

Client: **Mr G and Mrs P DOOKE**

Date: **17/04/2018**

Scale: **1:1000**

Author: **Newton Denny Charvelle**

Check: **Newton Denny Charvelle**

Drawn: **Newton Denny Charvelle**

Approved: **Newton Denny Charvelle**



Peter & Robyn Porritt
26 Boormans Road
Newrybar NSW 2479

10 January 2018

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

Re: Objection to DA 2017/662 - Function Centre at 1 Johnston Road Newrybar.

The Statement of Environmental Effects and it's associated Noise modeling is similar to that submitted for the previous DA 2015/712.

Since the application for DA 2015/712, the Land & Environment Court, in December 2015, determined in *Marshall Rural v Hawkesbury Council* that the sub clause 2.8(3) of the Local Environmental Plan requiring that the temporary use is not to adversely impact on any adjoining land or the amenity of the neighbourhood "is cast in absolute terms".

The Statement of Environmental Effects does not appear to address this issue or apply the correct test to clause 2.8 of the LEP. The Statement of Environmental Effects states that there is "minimal impacts on neighbouring residents" not an absence of adverse impact.

Given that the Noise Modeling submitted as part of the application also shows adverse affect on the amenity of the neighbours, Council has no option but to refuse the application.

We request that Council consider the fundamentally prohibitory nature of clause 2.8(3) of the LEP before determining the application and apply the correct test to this application in accordance with the Court's determination of similar applications for Function Centres in Rural areas.

Yours faithfully

A handwritten signature in black ink, appearing to read "Peter & Robyn Porritt". The signature is written in a cursive, flowing style.

Peter & Robyn Porritt

From: Mark Jones
To: [Naomi McCarthy; Ballina Shire Council](#)
Subject: Newrybar Downs DA 2017/662
Date: Wednesday, 10 January 2018 8:02:20 PM

General Manager
Ballina Shire Council
Cherry st
Ballina

Naomi McCarthy

Objection to Newrybar Downs DA 2017/662.

I urge council not to allow the extension of another 2 years for a function centre at Newrybar Downs.

A 3 year trial was given to assess the impact of the function centre on the amenity of the surrounding neighbours. Although there may not have been any complaints to council regarding noise does not mean that neighbours have not been affected by these functions. Traffic and noise are a problem.

Councillors voted for a 3 year trial for the Function Centre, it is ridiculous to think that after 12 months an extension is being sought.

It is suggested that 18 months is needed as a lead time for future bookings, yet approval for functions at Newrybar Downs was granted by council in August 2016 and the first ceremony was on 3rd September 2016, obviously 18 months is not needed.

This development does not fit within this neighbourhood, it must be rejected.

Regards

Mark and Christine Jones
24 Boormans Rd
Newrybar

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For more information please visit <http://www.symanteccloud.com>

25 Boormans Road
Newrybar
NSW 2479

11/01/18

Objection to DA 2017/662 - Function Centre at 1 Johnston Road
Newrybar.

Dear Sir/Madam,

I am writing to express my objection to the DA for the continuation of the temporary use of land at 1 Johnston Road as a function centre, due to the the adverse impact of noise affecting the amenity of neighbouring properties.

The Statement of Environmental Effects is similar to that submitted for the previous DA 2015/712. Since the original application (DA 2015/712), the Land & Environment Court determined in Marshall Rural v Hawkesbury Council that the sub clause 2.8(3) of the Local Environmental Plan requiring that the temporary use, is not to adversely impact on any adjoining land, or the amenity of the neighbourhood. (Dec 2015).

In DA 2017/662 the Statement of Environmental Effects appear neither to address this issue, nor to apply the correct test to clause 2.8 of the LEP. The Statement of Environmental Effects states that there is minimal impact on neighbouring residents, not an absence of adverse impact as should be the case. Noise Modelling submitted as part of the application shows a negative impact on the amenity of the neighbours.

I request that council take this Land and Environment court ruling into consideration when discussing the above development application.

Regards,

Kerry Goldstone

Anna E Rolfes
14 Boorman's Road
NEWRYBAR NSW 2479
email: annarolfes@gmail.com
ph 0414303750

General Manager
Ballina Shire Council
Att: Naomi McCarthy

40 Cherry St Ballina NSW 2478

9.January.2017

Re: DA 2017/662 Application for "Temporary Use of Land for Five Years Consisting of a Function Centre for the Purpose of Hosting up to 38 Wedding Ceremonies in any 12 months period".

Dear Madam/Sir

Herewith I would like to object to the extension from three to five years in the above application. This sort of venue constitutes of an inappropriate use of Rural Land. This view seems to be supported by both LEP definitions and by legal precedent as follows:

In the Ru1 Zoning Function Centres are prohibited. Further Function Centres are Entertainment Facilities in which Entertainment Activities take place that encroach on the neighbouring amenities:

1. Noise from the entertaining activities including the use of microphones and amplified music,
2. increase in traffic,
3. increase in a large amount of non-residential people regular coming to a small rural neighbour hood –up to 120 people on 38 occasions!

On purchase of Newrybar Downs their owners started operating a Wedding Function Centre that was unapproved. We as neighbours were bullied into having to defend our amenities while there was an entertainment facility established and running.

According to the Tax code: <https://www.taxinglessons.com/definition-entertainment-facility/>

"The tax code makes a distinction between entertainment activities, which includes meals, and entertainment facilities, which are "any item of personal or real property owned, rented, or used by a taxpayer * * * if it is used * * * for, or in connection with entertainment." (See section 1.274-2(e)(2) of the federal income tax regulations.)"

"Examples of entertainment facilities include yachts, hunting lodges, fishing camps, swimming pools, tennis courts, bowling alleys, automobiles, airplanes, apartments, hotel suites, and homes in vacation resorts. In one case ([Dodd](#)), the tax court held that a hot air balloon was an entertainment facility.

Wedding Centres are "Entertainment Facilities". They operate as 'facilities' for 'entertainment'. The operational consent of having up to 120 people on 38 occasions per year is not a "temporary use of land".

Anna letterhead.doc

The NSW Land and Environment Court has a ruling, which is clear in this regard. On 16.12.2015 the NSW Land and Environment Court (Marshall Rural PTYLtd v Hawkesbury City Council) found two applications approved by Council for "temporary use of a function centre" as invalid. The court found that the subclause 2.8 in the relevant LEP Plan "is cast in absolute terms" (that is requiring not to adversely impact on any adjoining land or amenity of the neighbourhood).

"The term "temporary use" needs to be considered correctly "because of the fundamentally propitiatory nature of the terms of cl2.8(3)(b)" (NSW Land and Environment Court- Marshall Rural PTYLtd v Hawkesbury City Council)

The location of Newrybar Downs on top of a hill where sound travels down to the properties along Boormans Rd makes it unsuitable for having an Entertainment Facility.

Further the zoning definition prohibits explicitly such a use of the land when neighbours amenities are diminished.

I ask the Council to implement its duty of care for our rural neighbourhood and not extend the three year trial operational period of Newrybar Downs as a Wedding Function centre.

Kind regards

Anna E Rolfes

Anna letterhead.doc

DA 2017/662 Newrybar Downs – Proposed Conditions of Consent

GENERAL

1. Development being carried out generally in accordance with the plans and associated documentation lodged by, or on behalf of, the applicant, including plans prepared by Newton Denny Chapelle, Ref. 17/562, Plan 3A and Plan 3B, Dated 02.11.17, except as modified by any condition in this consent.
2. Occupation or use of the site for the purposes authorised by this consent shall not commence until all conditions of this consent have been complied with, unless alternative arrangements have been made with Council.
3. This consent is for a limited time period that terminates on 26 April 2023. Should it be intended to continue the approved development beyond the nominated date, a new development application shall be lodged with Council. Council will consider the new development application on its merits, having regard to the performance of the development over the initial operating period and the applicable environmental planning instruments and local development plans at the time.
4. No more than 38 wedding ceremony functions may occur at the subject site in a 12 month period, with the first 12 month period commencing at the date of this consent.
5. No more than 120 guests are to attend any wedding ceremony function at the subject site.
6. No advertising sign(s) is to be erected or displayed without the prior submission of a development application to, and approval from, Council unless the proposed signage is consistent with the terms and limitation of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
7. As detailed in the Statement of Environmental Effects prepared by Newton Denny Chapelle, Dated November 2017, the main house and related facilities are not to be used by caterers to prepare food associated with the function centre (wedding ceremony) use of the land, unless the prior written consent from Council has been obtained.

PRIOR TO THE COMMENCEMENT OF USE

Unless otherwise stated all development and works referred to in other sections of this consent are to be completed together with the following conditions prior to use.

8. Prior to the use of the property for a function centre (wedding ceremonies), the owner must ensure that appropriate sanitary facilities, car parking and access from the car parking and drop off areas to the wedding ceremony location are provided in accordance with Australian Standards 1428 and 2890.
9. Prior to the use of the property for a function centre (wedding ceremonies), the applicant must submit certification from a suitably qualified bush fire consultant demonstrating that the requirements of the Bush Fire Safety Authority granted by the NSW Rural Fire Service under Section 100B of the Rural Fires Act 1997 on 22 February 2018 (refer to Schedule 1 – **attached**) have been addressed and complied with.
10. An updated Noise Management Plan (NMP) shall be submitted to and approved by Council which references DA 2017/662 and the conditions of consent contained therein. The NMP shall detail, but not be limited to, the following:

- Identify noise limits/restrictions at various locations within the property,
 - Notification processes for sensitive receivers of upcoming functions,
 - Identify monitoring locations and practices for compliance assessment,
 - Identify processes for dealing with non-compliances,
 - Identify roles and responsibilities for actions within the NMP, and
 - Complaints handling practices.
11. An updated Operational Management Plan (OMP) shall be submitted to and approved by Council which references DA 2017/662. The OMP shall be based on the information provided in the Statement of Environmental Effects, prepared by Newton Denny Chapelle, Ref. 17/562, Dated November 2017, and recommendations of the Noise Impact Assessment prepared by Tim Fitzroy and Associates, Dated 19 December 2015 and specify the following:
- Compliance with the conditions of development consent 2017/662;
 - The engagement of an agreed wedding or function planner to oversee the event and ensure compliance with the OMP;
 - Requirement for a representative of Newrybar Downs to be on site throughout the event. Contact details for this representative will be provided to neighbouring property owners;
 - Requirement for 14 days notice to be provided to all properties noted as a "sensitive receptor" in the Noise Impact Assessment, Dated 19 December 2015, prepared by Tim Fitzroy and Associates, prior to a wedding ceremony being held at the subject site. Details to be included in the notice are the date of the ceremony, hours of the ceremony, number of guests and the function number in that 12 month period (i.e. Function 1 of 38);
 - Requirement for all guests to arrive by mini bus (with provision to be made for up to five private vehicles for guests who are elderly and/or families with small children) with parking prohibited on the adjoining public roads; and
 - Limitations on function times and noise generation in accordance with the terms and conditions of development consent 2017/662.
 - A requirement for all future clients (bride and groom) to sign contracts linked to compliance with the OMP.
 - Complaint handling procedures, including the recording of all complaints received and the response to those complaints. The record of complaints to be made available to Council on request.
 - A copy of the approved Operational Management Plan and the Noise Management Plan is to be provided to all properties identified as "sensitive receptors".

CONDITIONS OF USE/DURING OCCUPATION

The following conditions in this section of the consent are to be complied with in the day-to-day use or operation of the approved development.

12. The Function Centre (Wedding Ceremonies) must be operated in accordance with the Noise Management Plan approved via condition 10 and the Operational Management Plan approved via condition 11 of this consent.
13. All waste generated on site is to be disposed to and stored in the nominated waste area/s.
14. Waste storage and collection must occur to prevent the creation of a negative amenity, odour or pest nuisance.
15. Noise generation shall be minimised during the set up and pack down periods to minimise any potential impacts on nearby residential premises. Hours of noise

generating set up and pack down activities shall be limited to 7.00 am to 7.00 pm weekdays and 8.00 am to 7.00 pm weekends and public holidays. Ceremonies will be conducted between the hours of 11am and 5.30pm.

16. Noise caused by the approved use, including music and all other noisy activities, must comply with the following criteria:
 - (a) The use must not result in the transmission of "offensive noise" as defined in the Protection of the Environment Operations Act 1997 to any place of different occupancy.
 - (b) The LAeq noise level emitted from the use must not exceed 42 dBA between the hours of 7.00 am and 6.00 pm (Mondays – Saturdays) or 8.00 am to 6.00 pm (Sundays) when assessed at the boundary of affected properties (or within 30 metres of the dwelling if the dwelling is remote from the boundary).
 - (c) The LAeq noise level emitted from the use must not exceed 37 dBA between the hours of 6.00 pm and 7.00 pm (all days) when assessed at the boundary of affected properties.
 - (d) Notwithstanding compliance with (a), (b) and (c) above, the noise from the use must not be audible within any habitable room in any residential property between the hours of 7.00 pm and 7.00 am (Mondays to Saturdays) or 8.00 am (Sundays).
17. The use of fireworks and helicopters shall be prohibited.
18. All water supplied for food preparation for wedding ceremonies shall be sourced from the reticulated drinking water supply.
19. All caterers servicing the facility shall be registered with Ballina Shire Council (or their home council) and shall comply with the requirements of the NSW Food Authority 'Food Handling Guidelines for Temporary Events', the FSANZ Food Safety Standards Code and the Food Act 2003 including having a Food Safety Supervisor appointed.

SCHEDULE 1

All communications to be addressed to:

Headquarters
15 Carter Street
Lidcombe NSW 2141

Telephone: 1300 NSW RFS
e-mail: records@rfs.nsw.gov.au

Headquarters
Locked Bag 17
Granville NSW 2142

Facsimile: 8741 5433



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

Your Ref: 2017/662
Our Ref: D17/4689
DA17121510912 AB

ATTENTION: Naomi McCarthy

22 February 2018

Dear Ms McCarthy

Integrated Development for 5//606566 - 1 Johnston Road Newrybar

I refer to your letter dated 5 December 2017 seeking general terms of approval for the above Integrated Development in accordance with Section 91 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:

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:

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

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'jball', enclosed in a light pink rectangular box.

John Ball
Manager

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'.