



26 February 2020
Ref No: 3031-1007

The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478
council@ballina.nsw.gov.au

Dear Planning Determination Panel

**Objection to Development Application 2019/519
23 Northcott Cr, Alstonville 2477 NSW (Lot: 2 DP: 1237064)**

GeoLINK has previously lodged three submissions on behalf of Mr Peter Felsch (12 Northcott Crescent), objecting to Development Application (DA) 2017/600 for expansion of an existing resource recovery facility to process up to 30,000 tonnes per annum of construction waste and associated building, infrastructure and earthworks at 19-21 Northcott Crescent, Alstonville. DA 2017/600 originally also included the lot at 23 Northcott Crescent, Alstonville which was subsequently removed and is now subject to the current DA 2019/519.

ABN 79 896 839 729
ACN 101 084 557

Return address:
PO Box 1446
COFFS HARBOUR
NSW 2450

LENNOX HEAD
T 02 8687 7666
F 02 6687 7782

COFFS HARBOUR
T 02 6651 7666

ARMIDALE
T 02 6772 0454

LISMORE
T 02 6621 6677

www.geolink.net.au

The previously raised matters of objection related to:

- Traffic and Parking
- Noise
- Dust and hazards
- Inconsistencies and deficiencies in the assessment.

The subject DA 2019/519 is for earthworks and associated retaining walls to create a larger development pad and the use of the pad for the purpose of a depot and storage premises at 23 Northcott Crescent, Alstonville.

It is understood that DA 2019/519 has not been notified or advertised, and that Council have scheduled determination of the DA on Thursday, 27 February 2020.

Our client is concerned that the current DA 2019/519 is not being properly considered given its nexus to the adjoining existing resource recovery facility and the associated DA 2017/600 for its expansion. The proposed use under DA 2019/519 is not a stand-alone, independent storage depot, but rather development that is directly associated with the resource recovery facility. As such, all components of the resource recovery facility, including the storage of waste/skip bins and their associated transport and management, should be holistically assessed as part of the one DA. This is because the current proposal effectively serves the resource recovery facility.

Under the principles of development characterisation set out by the Department of Planning, Industry and Environment (DPIE), development is considered to be for a particular purpose if that purpose is the dominant purpose of the development. This purpose is the reason for which the development is to be undertaken or the end to which the development serves. To determine whether a development is (or will be) for a particular purpose, an enquiry into how that purpose will be achieved by the development is necessary.



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In this case, it is submitted that the proposed storage depot, for large waste skip bins, serves the end and dominant purpose of the resource recovery facility. Hence, it should be assessed and considered in connection with the resource recovery facility. To put it simply, DPfE's planning circular states that: *if a component serves the dominant purpose, it is ancillary to that dominant purpose*. In this case the storage depot is not considered to be an independent use, and the application fails to adequately take into account inter-related and cumulative impacts when considered in association with the resource recovery facility.

Our client is concerned that the proposal under DA 2019/519 presents similar issues compared to that identified in DA 2017/600. However, the application fails to properly consider these potential impacts and risks. The concern is that the proposal does not satisfy particular objectives of the IN1 General Industrial Zone, including:

- To minimise the adverse effect of industry on other land uses
- To ensure that development does not expose adjoining uses to hazard risk.

It is our client's view that the DA and Statement of Environmental Effects (SEE) inappropriately define the proposal as a depot and storage premises, despite inconsistencies with the land use definitions in the Ballina Local Environmental Plan (LEP) 2012, as follows:

Depot: *Depot means a building or place used for the storage (but not sale or hire) of plant, machinery or other goods (that support the operations of an existing undertaking) when not required for use, but does not include a farm building.*

- The LEP definition excludes the sale or hire of stored plant, machinery or other goods. However, the application clearly states the skip bins are available for hire.

Storage premises *means a building or place used for the storage of goods, materials, plant or machinery for commercial purposes and where the storage is not ancillary to any industry, business premises or retail premises on the same parcel of land, and includes self-storage units, but does not include a heavy industrial storage establishment or a warehouse or distribution centre.*

- The above LEP definition outlines that the *storage is not to be ancillary to any industry, business premises or retail premises*. However, as outlined earlier, there is a clear nexus with the adjoining waste resource recovery facility and the storage of the skips is deemed to be ancillary to the dominant purpose of the waste resource recovery facility.

Our client is concerned with the following impacts and risks, which we do not believe have been adequately considered:

The skip bins are continually engaged in transport of construction waste – therefore potentially contaminated with Asbestos Containing Material (ACM), lead and mineral fibres. There is a risk of hazard and contamination, especially from any fine residue that resides in the bins during their storage. The current proposal to hold the skips temporarily between deployments without covers and stored, exposed to the elements, fails to account for or address these potential airborne and waterborne contaminant risks. On this basis, the stormwater management plan needs to manage these risks and the potential for residue/contaminant laden runoff.

Dust, dust-borne hazards, stormwater-borne hazards, noise, and traffic need to be considered in-light of the DA 2017/600 for the resource recovery facility and the use/storage of the subject skips. These issues should be managed and subject to conditions/requirements similar to those applicable for the resource recovery facility. Furthermore, the SEE does not adequately assess the heavy vehicle traffic movements associated with the transportation of the skips to and from the site. Previous concerns have been raised about the capacity of the industrial estate's roads. Recent independent engineering analysis undertaken by GeoLINK has identified that although Kays Lane and Russellton Drive each have a carriageway width of 13 m, the majority of the remaining roads within the Russellton Industrial

Estate have been constructed with substandard width. These include the two roads in addition to Kays Lane and Russellton Drive which must be travelled in order to access the site, being Northcott Crescent and Hugh Street, both of which have a kerb-to-kerb carriageway width of 11 m. Thus, 40 per cent of the 700 m haul route does not comply with the standard requirements for a road servicing industrial lots.

Given the previous use of the subject site (macadamia oil factory and storage) and a recent fire, there are concerns that the site may be contaminated, and the proposed earthworks may disturb and expose this. The requirements of the State Environmental Planning Policy No 55—Remediation of Land need to be satisfied prior to determination. Disposal of any spoil must be to a licensed facility and in accordance with Environmental Protection Authority (EPA) requirements.

For these reasons, our client submits that the current application should be put on hold and assessed with, or after, DA 2017/600 has been resolved (we note that an appeal has been lodged against the decision to grant consent). This is a reasonable approach given the proposed "storage depot" is intrinsically linked with the resource recovery facility. The same issues raised in relation to DA 2017/600, including contamination, dust, noise and hazardous materials, and the questionable capacity of the local street access, apply to the considerations of DA 2019/519. However, these do not appear to have been adequately evaluated and there is insufficient information to determine the DA 2019/519 at this time.

Yours sincerely

GeoLINK



Jacob Sickinger
Environmental Planner

Disclosure: It is advised that neither GeoLINK nor Mr Peter Felsch (as the submitter) have made any reportable political donations or gifts to Councillors or Council employees of the Ballina Shire.

Copy to: Mr Peter Felsch



2 March 2020
Ref No: 3031-1008

The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478
council@ballina.nsw.gov.au

Att: Planning/Development Determination Panel
cc: Georgia Lee (Planning Officer)

**Submission to Development Application 2019/519
23 Northcott Crescent, Alstonville 2477 NSW (Lot: 2 DP: 1237064)**

We refer to our letter of 26 February 2020 and the submission lodged on behalf of Mr Peter Felsch, objecting to Development Application (DA) DA 2019/519. This subsequent submission is provided to Ballina Shire Council on behalf of owners/occupiers of the following properties, inclusive of Mr Peter Felsch:

▪ 12 Northcott Crescent	<i>Peter Felsch</i> SITE & SPATIAL
▪ 16 Northcott Crescent	<i>Jeremy Lawless</i> TOTAL TECH SOLUTIONS
▪ 17 Northcott Crescent	<i>Jeffrey Gibbs</i> Northern Light
▪ 27 Northcott Crescent	<i>J. DiGiacomo</i>
▪ 29 Northcott Crescent	<i>Marian Mader</i> cleaner, owner of Hedges Well

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T 02 6621 6677

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The previously raised matters of concern relate to:

- dust
- contamination, hazardous materials and waste residue, including:
 - dust-borne hazards
 - stormwater-borne hazards
- noise
- traffic
- amenity
- and the use/storage of the subject skips and any association with the adjoining resource recovery facility.

Following further consideration about the above DA and determination by Council, the abovementioned owner/occupiers recommend that the following conditions (or those of similar but equivalent effect/intent) be imposed (in addition to any conditions already recommended by Council) on any development consent issued for DA 2019/519. Such conditions are required to ensure sound management practices are implemented on the site and that health and environmental hazards are acceptably avoided, minimised, and where necessary managed in accordance with legislative requirements and best practice.

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Urban and Regional Planning | Environmental Engineering | Civil Design | Environmental Impact Assessment | Ecological Surveys and Monitoring | Landscape Architecture | Urban Design | Coastline and Waterways Management

Prior to construction/commencement:

- A site plan of the development must be submitted to the satisfaction of Council, showing vehicle movement areas, skip and caravan storage spaces, with typical dimensions, verifying swept path movement dimensions for skip-carrying vehicles and caravan towing vehicles can be achieved.
- The site plan must show, and verify, that all vehicle movement areas will be designed to carry the largest vehicles to be utilised by the development and will be bitumen sealed or asphalt surfaced.
- The site plan must include dedicated on-site parking for staff, in accordance with the relevant rate in Council's Development Control Plan (or to the satisfaction of Council if no specific rate is identified). Parking must be constructed to Australian Standard AS/NZS 2890.1: 2004. All works are to be certified by a suitably qualified consultant prior to issue of the Occupation Certificate.

Reason: To minimise dust generated by moving vehicles or failing pavements that would otherwise impact the environment, particularly neighbouring properties, some of which have food-grade processing activities.

During construction:

- A Dust Management Plan shall be prepared for the site by a suitably qualified person. The management plan shall identify all potential dust generating activities and specify mitigation measures to minimise dust emissions, monitoring requirements and complaint handling procedures. The plan must be in accordance with applicable requirements/guidelines of the NSW Environment Protection Authority and Australian Standards. The Dust Management Plan must include a construction air quality monitoring program that:
 - is capable of evaluating the performance of the construction works
 - includes a protocol for determining any exceedances of the relevant conditions of consent and responding to complaints
 - adequately supports the air quality performance objectives
 - evaluates and reports on the effectiveness of air quality management for the construction works.

Guidelines and standards relevant to air quality and also the development of an associated management plan include the following publications:

- National Environment Protection Council's (NEPC) – NEPM for Ambient Air Quality Guidelines
 - Protection of the Environment Operations (Clean Air) Regulation, 2002
 - AS 2922 Ambient Air Guide for Citing of Sampling Equipment
 - AS 3580.1.1-2007 Methods for Sampling and Analysis of Ambient Air – Guide to Siting Air Quality Monitoring Equipment
 - AS 3580.10.1-2003 Methods of Sampling Analysis of Ambient Air
 - Action for Air 2009 (NSW DEC)
 - Approved Methods and Guidance for the Modelling and Assessment of Air Pollutants in New South Wales (DEC 2005)
 - Air Quality Monitoring Criteria for Deposited Dust (DEC Guideline).
- The applicant must implement an approved Stormwater Management Plan during the construction phase. Details must be submitted to The Principal Certifying Authority prior to other construction works commencing demonstrating compliance with the requirements of the approved Stormwater Management Plan. The Stormwater Management Plan is to include water quality monitoring techniques to be adopted to ensure that the water quality targets to be achieved for the Site are always maintained.

Reason: To ensure sound construction management and protection of the environment.

During operation:

- Only skip bins, caravans, shipping containers and the like, and the associated delivery vehicles – equipment that is either road registered for unrestricted public road use OR able to be loaded and unloaded by truck mounted equipment - can be unloaded, stored, and loaded on the site.
- The landscaped buffer identified in the approved plans must be established prior to operation and is to be maintained to provide an effective screen to the activities carried out on the site. The buffer shall achieve a minimum effective screen height of two metres when viewed from the public roadway adjacent to the development.

Reason: To comply with the intent of the development and maintain the amenity of the area.

- Skip bins are to be either cleaned to remove construction debris prior to being brought to the site for storage each time they are utilised, OR are to be effectively covered to prevent wind or rain disturbing construction debris/residue potentially containing hazardous material, causing it to be transported to and through the local environment. Any hazardous material must be managed in accordance with relevant EPA requirements and guidelines.
- No other vehicles, machinery or plant involved in the waste recovery industry are to be brought to the site before being effectively cleaned to remove all potential hazardous material.
- Stormwater detention systems are to be sampled by a suitably qualified person and assessed by a registered laboratory at intervals of no less than six months to verify that no hazardous materials are being released/discharged from the site to the local environment.
- Dust monitoring must be carried out at each property boundary for a period of 12 months from the commencement of operation and be managed by a suitably qualified person. The monitoring is to be carried out to establish compliance with air quality requirements and determine if further operational dust management is required on an on-going basis. The monitoring program must:
 - Be capable of evaluating the performance of the operation
 - Include a protocol for determining any exceedances of the relevant air quality parameters and responding to complaints
 - Adequately support air quality performance objectives
 - Evaluate and report on the effectiveness of air quality management for the operation.

Reason: To protect the local environment generally and the neighbouring businesses in particular from the accumulation of hazardous materials over time that can be released into the broader environment by wind and water action.

Yours sincerely

GeoLINK



Jacob Sickinger
Environmental Planner

We, the undersigned, wish to support this submission:

Name	Address	Signature
ALI PAYNE OPERATIONS MANAGER UAC MACAOAMIAS	13 RUSSELLTON DR WOLLONGBAR NSW 2477	
HOWARD RUBIN THE KOALA TEA COMPANY M. DIRECTOR	29 OWENS AVENUE ALSTONVILLE, 2477	
RON BIRCH WOLLONGBAR PROGRESS ASSOCIATION	9 CLOVELLY PLACE WOLLONGBAR	

enquiries refer
Georgia Lee
In reply please quote
DA: 2019/519



Newton Denny Chapelle
PO Box 1138
LISMORE NSW 2480

Notice to Applicant of Determination of a Development Application

Issued under Section 4.18(1)(a) of the Environmental Planning and Assessment Act 1979

Development Application No: DA 2019/519

Applicant: Newton Denny Chapelle

Subject Land: Lot: 2 DP: 1237064,
No. 23 Northcott Crescent ALSTONVILLE

Development Proposal: To establish a depot and storage premises and to undertake earthworks and retaining of the site

Development Type: Local Development

Determination: The development application has been determined by Ballina Shire Council on XXXXX 2020 by way of the **grant of consent subject to the conditions specified in this notice:**

This consent operates from: XXXXX 2020

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	Drawing No.	Drawing Title	Dated
Newton Denny Chapelle	190091-AP-BE-01, Rev A	Bulk Earthworks Plan	5 July 2019
Newton Denny Chapelle	190091-AP-BE-11, Rev A	Bulk Earthworks Sections	5 July 2019
Newton Denny Chapelle	190091-AP-CI-01	Stormwater and Services Plan	5 July 2019

except as modified by any condition in this consent.

40 cherry street, po box 450, ballina nsw 2478
t 1300 864 444 e council@ballina.nsw.gov.au w ballina.nsw.gov.au abn 539 29 887 369

2. Driveway construction

The proposed driveway within the road reserve and within the lot is to be constructed of reinforced concrete. All driveway areas are to be adequately graded and drained to stormwater treatment area and to Council's stormwater system.

3. Commencement of occupation or use

Occupation or use of the premises for the purposes authorised by this consent shall not commence until all relevant conditions of this consent have been complied with and a final Occupation Certificate has been issued by the Principal Certifying Authority (PCA), unless alternative arrangements have been made with Council.

4. No advertising signage to be displayed

No advertising sign(s) is to be erected or displayed without prior submission of a Development Application to, and approval from, Council, unless the proposed signage is consistent with the terms and conditions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

5. No hiring of skip bins directly from premises

The grant of this consent does not authorise or permit, and shall not be interpreted as authorising or permitting, the hiring of skip bins directly from the premises.

6. Compliance with National Construction Code

All building work is to comply with the requirements of the *National Construction Code* (NCC) and relevant Australian Standards.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE (Building)

The following conditions in this section of the consent must be complied with prior to the issue of any Construction Certificate relating to the approved development.

7. Long Service Levy

In accordance with Section 6.8 of the EP & A Act a Construction Certificate is not to be issued with respect to the plans and specifications for construction works until any long service levy payable under section 34 of the Building and Construction Industry Long Service Payments Act 1986 has been paid. Currently this rate is 0.35% of the cost of the construction works costing \$25,000 or more. Works less than \$25,000 are not subject to the levy.

8. Stormwater Management Plan & Designs

The provision of stormwater controls on site shall be in accordance with the Water Sensitive Design requirements of Council's Development Control Plan Chapter 2 – Section 3.9 - Stormwater Management and in general accordance with the Site Stormwater Management Plan by Newton Denny Chapelle, dated June 2019.

Overland flow paths must be incorporated into the design directing overflows around the perimeter of the site to the stormwater treatment/attenuation structure and from the structure via the easement at the north/east of the site.

Detailed design and construction plans must be submitted with the Stormwater Management Plan, to and approved by the Principal Certifying Authority prior to the issue of the Construction Certificate, detailing (but not limited to), the following:

- Typical cross-sections of the proposed drainage swales adjacent to the top of the retaining walls and perimeter of the site; design of the swale capacity to manage and capture up to the 100 year ARI event; details of how the

stormwater flows transition from the swale into the stormwater treatment /attenuation structure; swale profile and material (concrete or an approved equivalent).

- Design details of how the perimeter drainage flows transition and enter into the treatment/attenuation structure.
- Design details of the overflow weir in the event the treatment/attenuation structure overflows.
- Design details of the overland flow path profile and construction materials for the length of the swale throughout the easement downstream of the treatment/attenuation structure.
- Details of the maintenance access into the treatment/attenuation structure for people and plant/machines in a safe, workable and practical manner.
- Details of how debris/gravel/silt is to be cleaned out of the treatment/attenuation structure.
- Note that the use of mulch is not permitted.
- Structural design of the proposed block retaining walls to the treatment/attenuation structure.

9. Sewer Connection

The proposed extension of the existing sewer sideline further into the Lot and under the proposed rock retaining wall, shall be designed and constructed in accordance with the Northern Rivers Local Government Development Design & Construction Manuals. Design plans are to be submitted to and approved by Council prior to issue of the Construction Certificate.

10. Section 138 Driveway Approval

Prior to the issue of a Construction Certificate, a Section 138 application is to be made and fee paid for works on the road reserve. The fee is subject to review and may vary from the time of consent till time of payment see Councils schedule of Fees and Charges for the current rates.

PRIOR TO CONSTRUCTION WORK COMMENCING

The following conditions in this section of the consent must be complied with prior to commencement of construction works relating to the approved development.

11. Required fees

Where Council is not chosen as the Principal Certifying Authority, the relevant certificate registration fee and required sewer inspection fees are to be paid to Council in accordance with Council's Fee Schedule, prior to work commencing.

12. Traffic control

All traffic control shall be in accordance with the Roads and Maritime Services "Traffic Control at Work Sites Manual". A Traffic Control Plan must be prepared and submitted to Council by a person holding a current "Design & inspect Traffic Control Plan" qualification. The traffic control plan must be certified and include the designers Name & Certificate Number. Details are to be submitted to Council prior to the commencement of construction.

13. Commencement of building works

Building works carried out under the terms and conditions of this Development Consent must not be commenced until:

- (a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
 - (i) The Council; or

- (ii) An accredited certifier; and
- (b) The person having the benefit of the development consent has appointed a Principal Certifying Authority and has notified the Council (if Council is not the principal certifying authority) of the appointment; and
- (c) The person having the benefit of the development consent has given at least two (2) days notice to the Council of the person's intention to commence the erection of the building.

DURING CONSTRUCTION

The following conditions in this section of the consent must be complied with during the course of carrying out the construction works relating to the approved development.

14. Construction

The hours of operation for any noise generating construction activity (including the delivery of materials to and from the site) on the proposed development are to be limited to within the following times:

Monday to Friday	7.00am to 6.00pm
Saturday	8.00am to 1.00pm

No noise generating construction activities are to take place on Sundays or public holidays.

15. Waste container

For the control of litter, a suitable waste container for holding lightweight building materials must be made available on the building site during the course of the building work. Building waste such as paper, plastic, cardboard sarking etc. must be regularly cleaned up and placed in the waste container so that it cannot be blown off the building site and litter the local environment.

16. Builder's toilet

For the purposes of health and amenity, a temporary builder's toilet is to be provided on site before building work commences. Such facility is to be either connected to Council's sewer or a suitable approved portable chemical closet is to be provided.

17. Resource recovery exemption

Any material that is the subject of a resource recovery exemption and order received at the development site shall be accompanied by documentation as to the material's compliance with the exemption and order conditions and shall be provided to the Principal Certifying Authority or the Council upon request.

18. Mosquito management

All stormwater management devices must be constructed and installed to ensure they do not hold water for more than 3 days after inflows have ceased to prevent mosquito breeding.

19. Site contamination

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about the site contamination must be immediately notified to the Council and the Principal Certifying Authority.

20. Clean up equipment

Clean up equipment including suitable absorbent material shall be stored on site to effectively deal with liquid contaminates, such as oils and chemical, leaks or spills during the construction period.

21. Pollution incidents

In the event of a pollution incident on the premises, that has caused, is causing, or is likely to cause harm to the environment, the incident shall be reported in accordance with the requirements of section 148 of the Protection of the Environment Operations Act 1997.

22. Demolition

All work, including demolition, excavation and building work shall comply with Australian Standard AS 2436:2010 *Guide to Noise Control on Construction, Maintenance and Demolition Sites* and *NSW Interim Construction Noise Guidelines* (DECC 2009).

23. Single all weather accessway

A single all weather accessway is to be provided on site. All construction vehicles are to enter and exit the site via this accessway so as to minimise erosion on site and prevent the movement of soil material onto surrounding roadways (if required provide a 'shake down' grid area for truck wheel washing). When necessary, roadways shall be swept and all drains and gutters cleaned of sediment material.

24. Sediment and erosion control

To prevent the pollution of waterways, the applicant/builder is to ensure adequate sediment and erosion control measures are in place prior to the commencement of works. These are to be maintained during the construction of the project until the site has been stabilised by permanent vegetation cover or a hard surface. This is to include:

- The prevention of soil erosion and the transportation of sediment material into any roadway, natural or constructed drainage systems, watercourse and or adjoining land
- Service trenches being backfilled as soon as practical
- Downpipes being connected as soon as practical or the use of temporary downpipes
- Buffer vegetation zones being retained on sites that adjoin roadways, drainage systems and or watercourses
- Sediment and erosion control measures are to be maintained throughout the construction process and beyond by the owner, where necessary.

Failure to comply with this requirement may result in an on-the-spot fine being issued by an Authorised Officer of Council.

25. Sediment and erosion control

Soil erosion and sediment control measures shall be designed, installed and maintained in accordance with *Managing Urban Stormwater – Soils and Construction*, LANDCOM, March 2004.

26. Sediment and erosion control

Sediment and erosion control measures shall be installed and effectively maintained to control stormwater runoff. All disturbed and exposed areas shall be immediately stabilised with hard surface or revegetated on completion of earthworks.

27. Sediment and erosion control

Sediment and erosion control measures shall be installed and maintained to control stormwater runoff, until such time the site is stabilised and/or revegetated.

28. Dust management

Dust shall be managed using water suppression, re-establishment of vegetation cover, stockpile management, covering loads, preventing spoil tracking onto roads and halting works on site in extreme wind events. Further guidance can be sourced from 'No Dust No Fuss: Guidelines for controlling dust from construction sites' NSW EPA.

29. Covering of stockpiles

Suitable covering and protection is to be provided to all stockpiles to ensure that no material is removed from the site by wind, causing a nuisance to neighbouring properties.

30. Inspection of erosion, dust and sediment controls

Daily inspections of all erosion, dust and sediment controls must be carried out to ensure they are adequately maintained. Inspections of all such controls must also be carried out prior to the onset of heavy rain.

31. Vehicles and trailers to be covered

The body of any vehicle or trailer used to transport waste or excavation spoil to and from the site must be covered before leaving the premises to prevent any spillage or escape of any dust, waste or spoil.

A sign must be erected in a prominent position on the site to which building work, subdivision work or demolition work is being carried out.

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

The sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

32. Excavation

If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (a) Protect and support the adjoining premises from possible damage from the excavation, and
- (b) Where necessary, underpin the adjoining premises to prevent such damage.

This does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

33. Storage of materials

Any construction related activities or storage of materials or structures on public reserves under the care and control of Ballina Shire Council is prohibited.

34. Temporary amenities to be removed

All temporary builder's sheds, amenities, waste storage bins and builder's power pole are to be removed from the site on completion of the building.

35. Occupation Certificate to be obtained

On completion of the works, and prior to the use of the development, an Occupation Certificate is to be obtained from the Principal Certifying Authority.

36. Export/Import of Waste

The export/import of waste (including fill or soil) to and from the site must be in accordance with:

- a) the provisions of the *Protection of the Environment Operations Act 1997*, *Protection of the Environment Operations (Waste) Regulation 2014* and the Environment Protection Authority 'Waste Classification Guidelines', which may require laboratory testing in accordance with NSW EPA and Council requirements; or
- b) current Resource Recovery Orders and Exemptions.

It is an offence to transport waste to a place that cannot lawfully be used as a waste facility.

37. Earthworks and filling

All earthworks and filling shall be carried out in accordance with AS 3798 (current version) to a Level 1 inspection regime and testing in accordance with Table 8.1.

The earthworks and filling shall also be undertaken in accordance with the Geotechnical Investigation approved with the Construction Certificate and monitored by a Registered Geotechnical Testing Consultant.

Notwithstanding earthworks and filling, the frequency of field density tests for trenches shall be undertaken in accordance with Table 8.1 of AS 3798 (current version).

PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

Unless otherwise stated all conditions referred to in other sections of this consent must be complied with together with the following conditions prior to occupation or use.

38. Landscaping

A landscaped area with a minimum width of 3.0 metres across the entire frontage (apart from the driveway) is to be provided as shown on Drawing No. 190091-AP-CI-01, Revision A dated 5 July 2019 prepared by Newton Denny Chapelle, with plantings chosen that will screen the development from the street and consist of native and endemic species. Species should be selected for their relatively fast growth and low maintenance characteristics.

39. Civil works

All civil works approved with the Construction Certificate and under Section 138 of the Roads Act 1993 and Section 68 of the Local Government Act 1993, are to be completed to the satisfaction of Council prior to issue of an Occupation Certificate. All works are to be completed in accordance with the Northern Rivers Local Government Development Design and Construction Manuals and/or in accordance with other design requirements from Austroads, Australian Standards or Roads & Maritime Services where specified.

40. Stormwater

Prior to the issue of an Occupation Certificate, certification must be provided to the Principal Certifying Authority that all stormwater works have been provided in accordance with the approved Construction Plan and the approved Stormwater Management Plan. Overland flow paths must not be impeded through structures or landscaping and must direct stormwater flows to the public drainage system and not onto adjoining properties. This certification is to be provided by a registered certified practicing Engineer competent in the field of stormwater design and familiar with all aspects of the project.

41. Filling of the site

Prior to the issue of the Occupation Certificate, certification must be submitted from a suitably qualified practicing geotechnical engineer verifying that the site filling was completed in accordance with Level 1 geotechnical testing under AS 2870 & AS 3798 and has adequate bearing capacity for building construction. In addition, the certification shall also verify that any fill material imported to the site is free of contaminants being natural or otherwise, and was obtained from an approved fill source with quality assurance testing.

42. Damage to Council infrastructure

Prior to issue of an Occupation Certificate, public infrastructure, such as kerb and guttering, footpath utility services or road works, damaged as a result of construction works related to the development shall be rectified and reinstated to the satisfaction of Council.

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.

43. Amenity impacts

The land use on site shall not interfere with the amenity of the locality by reason of the emission of noise, vibration, odours, fumes, smoke, vapour, steam, dust, water, waste products and the like.

44. Skip bins to remain empty at all times

Skip bins stored on the site are to remain empty at all times.

45. Storage of empty skip bins

The depot permits the storage of empty bins and skips. The bins and skips shall be stored in suitably clean condition to prevent the creation of an odour or pest nuisance or leachate generation. A procedure must be developed and implemented during operations to ensure all bins are received in a suitably clean condition. No waste shall be transported to or stored at the site, other than any waste generated at the site itself, without the prior approval of Council.

46. Mosquito management

To prevent mosquito breeding, all stormwater management devices/infrastructure are to be maintained to ensure they do not hold water for more than 3 days after inflows have ceased.

47. Noise generation

The use of the premises shall comply with all applicable noise legislation and not give rise to the transmission of unacceptable or offensive noise to any place of different occupancy in accordance with the NSW EPA's *Noise Policy for Industry 2017* as well as *The Protection of the Environment Operations Act 1997 (NSW)*.

48. Disposal of waste

All waste generated onsite must be disposed of at an approved waste facility.

49. Waste storage

Adequate waste storage must be provided onsite if operations generate the volume/type of waste requiring storage.

50. Dust generation

The surface of the site must be maintained to prevent the generation of dust.

STATEMENT OF REASONS FOR DECISION AND IMPOSITION OF CONDITIONS

1. The subject development is permissible with consent in the IN1 General Industrial zone of the Ballina Local Environmental Plan 2012.

2. The subject development has been assessed against the relevant considerations under the Environmental Planning and Assessment Act 1979, including the provisions of all relevant Environmental Planning Instruments, the objectives of the Ballina Local Environmental Plan 2012 and the objectives of the IN1 General Industrial zone. It has been determined that the site is suitable for the subject development and that the development is unlikely to have a significant adverse impact on the natural and built environments and is unlikely to have a significant adverse economic or social impact on the locality.
3. The application was not required to be placed on public exhibition in accordance with Environmental Planning and Assessment Act 1979 or Environmental Planning and Assessment Regulations 2000, an Environmental Planning Instrument or Local Exhibition Policy.
4. The application has been determined by the elected Council.
5. The approval of the development is in the public interest.
6. The reasons for the conditions listed in this determination notice are:
 - To ensure compliance with the requirements of the Environmental Planning & Assessment Act, 1979;
 - To ensure compliance with the objectives of the Ballina Local Environmental Plan 1987/2012);
 - To ensure an appropriate level of amenities and services is available;
 - To protect the existing and likely future amenity of the locality;
 - To maintain, as far as practicable, the public interest;
 - To ensure compliance with the Building Code of Australia and relevant Australian Standards;
 - To ensure satisfactory compliance with relevant Council plans, codes and policies.

ADVISORY MATTERS

1. Disability Discrimination Act 1992

The granting of this consent does not imply or confer compliance with the requirements of the *Disability Discrimination Act 1992 (DDA)*. The applicant is advised to investigate any liability that may apply under that Act. *Australian Standard AS 1428 – Design for Access and Mobility* should be consulted for guidance. The prescriptive requirements of Part 1 of the Standard apply to certain buildings requiring development consent.

Compliance with the BCA does not guarantee compliance with the DDA. The BCA provides important access provisions however:

- a) it does not cover all developments that are subject to the provisions of the DDA;
- b) it focuses primarily on access for people with disabilities which affect their mobility and does not address other disabilities, such as sensory disabilities; and
- c) while it mandates improved access for people with disabilities, it is not framed in terms of "equality of access."

You are therefore advised to investigate your liability under the DDA with respect to any existing and proposed future works.

2. Protection of the Environment

The development is to be operated in accordance with the provisions of the Protection of the Environment and Operations Act 1997 as it applies to issues of air quality, noise generation, water and wastewater quality.

3. **Noise control**

Use of the premises/services/equipment/ancillary fittings shall not give rise to an "offensive noise" as defined under the provisions of the *Protection of the Environment & Operations Act 1997*.

4. **WorkCover requirements**

The premises shall be operated in accordance with the requirements of the WorkCover Authority.

5. **Wastewater management advice**

All work carried out in connection with this approval must comply with any applicable standard established by the Local Government (Approvals) Regulation 1993, the Local Government (Water, Sewerage and Drainage) Regulation 1993, or by or under the Act.

6. **Smoke Free Environment**

As required by the Smoke-free Environment Act 2000 smoking is banned within 4 metres of the pedestrian entrance or exit of the building used for non-residential purposes. 'No smoking' signage is recommended to support public awareness of the smoking ban. On the spot fines may be issued to those who do not comply with the 4 metre requirement.

7. **Mosquito management**

As the site is located on the coastal plains and lowlands in an area of high risk for mosquitoes it is recommended that all windows, doors and other openings are adequately screened to prevent the entry of mosquitoes.

Advisory Note:

The applicant is advised to take care in ensuring that no damage is done to or unauthorised modifications are carried out on either Council's or any other organisation's underground infrastructure assets. Any Council sewer, stormwater or water main or other organisation owned electricity supply or telecommunication facility is not to be damaged or altered in any way without the necessary approvals being obtained beforehand from the relevant server.

You are advised to contact the following:

- **Council - for information on sewer, water supply & stormwater**
- **Rous Water - Water Supply for Rous Water Authority controlled areas**
- **"Dial Before You Dig" - for other service infrastructure**

The information relating to your property is to be obtained prior to any works commencing.

The consent shall lapse on XXXXX 2025 unless the development has commenced in accordance with the provisions of section 4.53 of the Act.

Other Approvals: **The following approval bodies have given general terms of approval in relation to the development:**

N/A

(insert electronic signature here)

Signed: _____ on XXXXX 2020

Andrew Smith
 Manager Development Services
Planning and Environmental Health Division
 On behalf of Ballina Shire Council

Right of Appeal: If you are dissatisfied with this decision, Sections 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979 gives you, the applicant, the right to appeal to the NSW Land and Environment Court within six months after the date on which you receive this notice.

Except in the case of designated development, there is no provision within the Environmental Planning and Assessment Act 1979 for a third party (objector) to appeal against the consent issued by the Council.

Review of Determination: Section 8.3 of the Environmental Planning and Assessment Act 1979 gives you, the applicant, the right to request the consent authority to review the determination of your application. This request must be made and the review conducted and completed within the time prescribed by Section 8.3(2). A request must be accompanied by the fee prescribed by Section 257 of the Environmental Planning & Assessment Regulation 2000. Review provisions do not apply to:

- (a) a determination in respect of designated development, or
- (b) a determination made by the Council under Division 4.6 in respect of an application by or on behalf of the Crown.