

McCartney Young Lawyers

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Our Ref: MEY:20190096
Your Ref: Kate Singleton

3 April 2019

Ms Kate Singleton
Planners North
PO Box 538
LENNOX HEAD NSW 2478

Dear Kate

Smith & Smith - Development for purposes of tourist accommodation and cooking school
Property: 841 Fernleigh Road, Brooklet

We refer to our relatively recent correspondence with respect to the above matter and to your letter of 14 February 2019.

Instructions

We are instructed as follows:

1. Mr and Mrs Smith own the property at 841 Fernleigh Road, Brooklet (**Property**). The Property is zoned RU1 – Primary Production under the *Ballina Local Environmental Plan 2012* (LEP).
2. You have been engaged by Mr and Mrs Smith to prepare a development application for tourist and visitor accommodation and an associated building (noted on the plans as "Recreation"). That "recreation" building includes a kitchen that will function in conjunction with a cooking school.
3. The proposed building is intended to be a place where guests of the accommodation can "relax, interact and recreate". The cooking school will only be conducted in part of that building.
4. A pre-DA lodgement meeting was held with Ballina Shire Council (**Council**) staff on 19 November 2018.
5. At that meeting, Planners North presented the proposed cooking school to Council staff as an "information and education facility". Council staff contended that the "scale of the recreation building was more akin to a function centre which is prohibited in the zone".

We are instructed to provide advice in relation to the permissibility of the proposed cooking school as an "information and education facility".



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LOCAL GOVERNMENT
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Further instructions and facts

As identified in the plans provided to us, and described in the record of the pre-DA lodgement meeting, the proposed development seeks consent for the construction of 8 cabins, the recreation building and facilities for car parking. The development also seeks consent for the use of the land – particularly the recreation building – for the purposes of a cooking school. That use has been characterised as an “information and education facility”.

We note the plans prepared by Ron Johnson (of Brooklet). With respect to the accommodation component, the plans depict 4 buildings, each building divided into separate accommodation (a cabin). The cabins are in close proximity to that building labelled “Recreation”. The plans also note an “Existing Tennis Court” in close proximity to the cabins and the recreation building.

Additional plans provide the detail of the cabins.

A separate plan depicts the “Proposed Recreation and Amenities Building”. That building includes an office, laundry, toilet facilities and a central open area titled “Lounge Recreation”. The recreation building is linked by way of a deck and “breezeway” to that part of the facility that constitutes the kitchen (“Kit”). The kitchen includes a pantry and cool room and what appears to be a large central table or preparation area.

Having regard to the form in which the plans have been provided to us it is difficult to give an accurate estimate of the area of the cabins and recreation building. By way of comparison of the depiction of the structures in “Plan View”, the recreation building appears to be slightly larger in size than a cabin building (consisting of two cabins).

The “Record of pre-DA Lodgement Meeting” states that the area of the recreation building is 240m².

We note that a development application for a “home business” - the conduct of small cooking classes from an existing approved cabin - was lodged with Council in 2018. We have been provided with a copy of the development application that sought consent for that use. Included with that DA is a “Site Plan” and “Site Analysis”. The subject property can be described as “long and narrow”, with the (generally) eastern (narrow) end of the property fronting Fernleigh Road. The improvements on the property are generally located towards the eastern end, relatively close to the property boundary.

The plans prepared by Ron Johnson show the cabins and the recreation building located in close proximity to each other; and these proposed buildings will be located relatively close to the existing dwelling. There is a clustering of the development at a particular location on property.

The remainder of the property, extending towards the west, covers a reasonably significant area and appears to be used for various rural purposes (including agriculture and grazing).

With respect to the relationship between the cabins and the recreation building, the record of the pre-DA lodgement meeting indicates that the ‘recreation building’ is to be used as a “communal area for cabin guests and a kitchen building which will house the cooking school”.

Characterisation – Generally

When characterising development, the relevant enquiry is whether the proposed development is within a purpose that may be carried out with development consent and not one that is prohibited: *Botany Bay City Council v Pet Carriers International Pty Limited* ([2013] NSWLEC 147) (*Pet Carriers*). The matters that arise for consideration when a development is being characterised are set out by his Honour Chief Justice Preston in

Chamwell Pty Ltd v Strathfield Council ([2007] NSWLEC 114) (*Chamwell*). In planning law, use must be for a purpose: *Chamwell* at [27]. In determining whether land is used for a particular purpose, an enquiry must be undertaken as to how that purpose can be achieved. Characterisation of the purpose of a use of land should be undertaken "at a level of generality which is necessary and sufficient to cover the individual activities, transactions or processes carried on, and not in terms of the detailed activities, transactions or processes".

Where there are two uses, ordinarily the dominant purpose can be regarded as the whole: *Foodbarn Pty Ltd v Solicitor-General* ((1975) 32 LGRA 157). However, where the whole of the premises is used for two or more purposes, none of which subserves the other, it is irrelevant to enquire which purpose is dominant. Whether a particular use is an independent use is a question of fact and degree in all the circumstances of the case. "When one use of land is by reason of its nature and extent capable of being an independent use it is not deprived of that quality because it is 'ancillary to', or related to, or interdependent with, another use": *Baulkham Hills Shire Council v O'Donnell* ((1990) 69 LGRA 404 at 409).

The characterisation of the purpose of development must be done in a common sense and practical way: *Chamwell* at [45].

As noted above it is a fundamental step in the process to enquire whether the proposed activity can be characterised as one of the permissible uses nominated in the relevant instrument (in this case the Ballina LEP). It is not to determine, at large, the category of purpose into which the development should be seen as falling and to formulate a description of that category (*Pet Carriers* at [32]; see also *Lonergan v Byron Shire Council* [2000] NSWLEC 21 at [10]; *Doyle v Newcastle City Council* (1990) 71 LGRA 55 at 60).

Relevant information to Characterisation in this matter

On behalf of our client it was put to Council that the proposed cooking school is an "information and education facility" under the LEP. As noted above, Council do not agree with that characterisation (more on this below).

There seems to be no argument that the "cabins" are a form of "tourist and visitor accommodation".

An information and education facility is defined pursuant to the LEP as follows:

information and education facility means a building or place used for providing information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like.

The relevant provisions of the Land Use Table, with respect to permissible development in the RU1 zone, are as follows:

2 Permitted without consent

Environmental protection works; Extensive agriculture; Home-based child care; Home occupations; Intensive plant agriculture

3 Permitted with consent

Airstrips; Animal boarding or training establishments; Aquaculture; Boat launching ramps; Boat sheds; Car parks; Cellar door premises; Cemeteries; Dual occupancies; Dwelling houses; Environmental facilities; Extractive industries; Farm buildings; Flood mitigation works; Forestry; Helipads; Home businesses; Home industries; Home occupations (sex services); **Information and education facilities**; Intensive livestock agriculture; Jetties; Markets; Mooring pens; Moorings; Open cut mining; Recreation areas; Recreation facilities (outdoor); Roads; Roadside stalls; Rural industries; Rural supplies; Rural workers' dwellings; Sewerage systems; Signage; **Tourist and visitor accommodation**; Turf farming; Water recreation structures; Water supply systems

4 Prohibited

Advertising structures; Backpackers' accommodation; Hotel or motel accommodation; Serviced apartments; Any other development not specified in item 2 or 3

(**emphasis** added)

The record of the pre-DA lodgement meeting indicates that Council is of the view that the 'recreation building' cannot be characterised as an 'information and education facility', as such a use "would generally be for larger scale development in urban areas". Council has expressed the view that the 'recreation building' "was more akin to a 'function centre' which is prohibited in the zone".

A function centre is defined in the LEP as follows:

function centre means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

Development for the purposes of a function centre is prohibited in the zone.

Clause 7.9 of the LEP is also relevant:

7.9 Rural and nature-based tourism development

(1) The objective of this clause is to ensure that services and facilities provided for tourists in rural and natural areas do not adversely impact on the agricultural production, scenic or environmental values of the land.

(2) This clause applies to land in the following zones:

- (a) Zone RU1 Primary Production,
- (b) Zone RU2 Rural Landscape.

...

(6) In this clause:

small scale means a scale that corresponds to that of residential uses in a rural or environmental locality.

tourism development means development for any of the following purposes:

- (a) caravan parks,

...

- (e) information and education facilities,

...

- (k) tourist and visitor accommodation

(emphasis added)

Advice – the use is for the purposes of an information and education facility

As noted above, development for nominated purposes is permissible in the zone. In accordance with paragraph 3 – "Permitted with consent" – development consent can only be granted for those purposes that are nominated (Land Use Table to the RU1 zone).

Pet Carriers is relevant again:

In this case, therefore, the relevant inquiry was whether Pet Carriers' proposed development was within a purpose of development that may be carried out with development consent and not one that is prohibited. Relevantly, this required determining whether the proposed development was to be characterised as being for the nominate permissible purpose of "commercial premises" and not for any innominate prohibited purpose, such as "airport-related land use" or "air freight forwarder"

(*Pet Carriers* at [33])

A "function centre" is not nominated as permissible with consent in the Ballina LEP: it is innominate. Innominate uses are prohibited (pursuant to paragraph 4 of the Land Use Table to the RU1 zone).

As identified above, it is proposed that a large part of the 'recreation building' is intended to be used as a lodge for guests staying on the property. That part of the building can be said to be for the purpose of tourist and visitor accommodation.

It would be possible to characterise the kitchen and cooking school as being ancillary to the tourist and visitor accommodation and therefore permissible (*Foodbarn*). However our mutual clients are being very "up front" about their proposed operation. They wish to use the recreation building and particularly the kitchen for the purposes of a cooking school. That is, that use is to be independent of the tourist and visitor accommodation: the school is not solely for use by guests staying in the accommodation. It must therefore be permissible in its own right as a separate and independent use.

The definition of "information and education facility" in the Ballina LEP should be kept in mind. At its simplest it means a building or place used for providing information or education to visitors; there can be associated aspects of such a use, including the exhibition or display of items. The list of examples ("art gallery, museum") is not exhaustive.

In my opinion this seems to be exactly what our clients are proposing. Cooking classes, involving local produce (indeed produce that may be sourced from the very property itself) will be provided to visitors staying on the property and/or people who drive to the property expressly for that purpose. Clients will be taught cooking skills (educated) in the context of, and will receive information about, ingredients sourced from the locality. It is likely that they will be able to buy local food placed on display in conjunction with the cooking school.

The facts of the matter, and particularly the plans, are entirely consistent with this proposed use.

To go further and enquire as to whether the use might also be characterised as being for the purpose of a "function centre" is not permissible at law.

It must first be noted that there is some significant doubt as to whether the recreation building is of a size and scale that would allow it be used as a "function centre" as that term is commonly used. It is simply too small.

The authorities referred to above are sufficient to identify the error that would arise if the Council were to characterise this use as also for the purposes of a "function centre", although those authorities are not exhaustive. The decision of Cripps J in *Doyle v Newcastle City Council* is very instructive. The development before the court was a proposal to use half of a domestic garage as a pigeon loft, that being the hobby of one of the occupants of the dwelling. Use of the property for the purpose of a dwelling house was permissible (together with a limited number of other uses); all other purposes were innominate and were prohibited. An Assessor (as they then were) of the Court found that the pigeon loft was not ancillary to the dwelling house and the proposed use was prohibited because it fell within the definition of agriculture under the relevant instrument.

His Honour said:

Thereafter, in my opinion, the assessor ... asked the wrong question. The question should have been: is the proposed activity one of the permissible uses referred to in cl 12 and not: does the proposed activity come within the definition of "agriculture".

The Assessor's reasoning was infected with legal error because the characterisation enquiry did not end at the determination of whether the proposal was for a permissible nominated use. The use was, as a matter of fact and law, permissible: it was ancillary to the dwelling

house. To inquire further as to whether the particular development might also be "something else" – indeed something not expressly nominated in the land use table – was an error.

Two additional matters need to be noted.

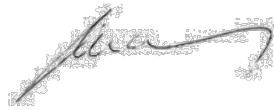
1. There is no basis for Council to assert that an "information and education facility" is confined to an urban area. Indeed the Ballina LEP foreshadows that such a use can take place in a rural zone – see the provisions of cls. 7.9 extracted above.
2. Our clients are entitled to an assumption that the development will be conducted lawfully. The fact that Council hold the opinion that the recreation building could be used as a "function centre" is not a valid or lawful reason to refuse consent to a lawful use. Indeed even if there was evidence of a past unlawful use, that would not be a lawful reason to refuse consent (*Jonah Pty Ltd v Pittwater Council* [2006])

Conclusion

For the reasons noted above our clients are entitled to have their development application for a mixed use development (consisting of "tourist and visitor accommodation" and "information and education facility") assessed as a development that is permissible in the zone. Council would be in error if it sought to characterise part of the development as being for a "function centre".

We trust that this is sufficient for your current purposes and sets out the client's legal position. If we can be of further assistance please contact either Michael Young or Sarah Tanttari at our office.

Yours faithfully



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ASSESSMENT OF THE APPLICATION UNDER SECTION 4.15 (1) OF THE EP& A ACT 1979**4.15 (1) (a) (i) - the provisions of any environmental planning instrument****Local Environmental Plans (LEPs)**

Relevant LEP	Applies YES/NO
Ballina Local Environmental Plan 2012	Yes
Ballina Local Environmental Plan 1987 (Note: BLEP 1987 only applies to land identified as "Deferred Matter" on the Land Application Map accompanying the BLEP 2012)	No

Ballina LEP 2012 – Zoning, Permissibility and Relevant Clauses	Comments/Is consistency with these provisions achieved?
Aims, objectives of BLEP (Clause 1.2)	The proposal is generally consistent with the aims and objectives of the BLEP 2012.
Land use definition (Clause 1.4)	<p>The proposal seeks consent for tourist and visitor accommodation, an associated recreation building and an information and education facility.</p> <p>Tourist and Visitor Accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following—</p> <p>(a) backpackers' accommodation, (b) bed and breakfast accommodation, (c) farm stay accommodation, (d) hotel or motel accommodation, (e) serviced apartments, but does not include—</p> <p>(f) camping grounds, or (g) caravan parks, or (h) eco-tourist facilities.</p> <p>Information and Education Facility means a building or place used for providing information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like.</p>
<p>The following is an extract from the pre-da lodgement minutes (CM 18/389534):</p> <ul style="list-style-type: none"> • It was clearly and strongly outlined that the scale of the "recreation building" was more akin to a "function centre" which is prohibited in the zone, and given the size of the recreation building and kitchen building, it is important to define the uses clearly in the application. This DA would be placed on public exhibition and would likely generate significant interest due to this building. • The applicant suggested that the Kitchen building could be defined as an "Information and Education Facility" for cooking classes associated with the vegetable garden for guests as this was permissible in the zone. It was outlined that if it were for small classes and space utilised it may be considered as a "home business" type use (within the existing dwelling house or cabin). However, given the size of the building it could not be defined as such. An "Information and Education Facility" would generally be for larger scale development in urban centres. 	

<p><i>There are options within either the existing dwelling house (manager's residence), the existing cabin or one of the proposed cabins to reasonably allow for small scale cooking classes to occur without the need for additional kitchen facility and recreation space. It is also noted that there was generally nothing on-site (intensive rural business/activity of the farm/natural based environment) that would require such use as an "Information and Education Facility".</i></p>	
<p>The application does not separately define the recreation building and seeks consent in association with the tourist and visitor accommodation. The applicant has provided legal advice (CM 19/96400) in response to the above minutes, an extract of which is below:</p> <p><i>A "function centre" is not nominated as permissible with consent in the Ballina LEP: it is innominate. Innominate uses are prohibited (pursuant to paragraph 4 of the Land Use Table to the RU1 zone).</i></p> <p><i>As identified above, it is proposed that a large part of the 'recreation building' is intended to be used as a lodge for guests staying on the property. That part of the building can be said to be for the purpose of tourist and visitor accommodation.</i></p> <p><i>It would be possible to characterise the kitchen and cooking school as being ancillary to the tourist and visitor accommodation and therefore permissible (Foodbarn). However our mutual clients are being very "up front" about their proposed operation. They wish to use the recreation building and particularly the kitchen for the purposes of a cooking school. That is, that use is to be independent of the tourist and visitor accommodation: the school is not solely for use by guests staying in the accommodation. It must therefore be permissible in its own right as a separate and independent use.</i></p> <p><i>The definition of "information and education facility" in the Ballina LEP should be kept in mind. At its simplest it means a building or place used for providing information or education to visitors; there can be associated aspects of such a use, including the exhibition or display of items. The list of examples ("art gallery, museum") is not exhaustive.</i></p> <p><i>In my opinion this seems to be exactly what our clients are proposing. Cooking classes, involving local produce (indeed produce that may be sourced from the very property itself) will be provided to visitors staying on the property and/or people who drive to the property expressly for that purpose. Clients will be taught cooking skills (educated) in the context of, and will receive information about, ingredients sourced from the locality. It is likely that they will be able to buy local food placed on display in conjunction with the cooking school.</i></p> <p><i>The facts of the matter, and particularly the plans, are entirely consistent with this proposed use.</i></p> <p><i>To go further and enquire as to whether the use might also be characterised as being for the purpose of a "function centre" is not permissible at law.</i></p>	
<p>Zoning under BLEP 2012, permissibility within zone and regard for zone objectives (Clause 2.3)</p>	<p>The subject land is zoned RU1 Primary Production.</p> <p>The objectives of the zone are:</p> <ul style="list-style-type: none"> • <i>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</i> • <i>To encourage diversity in primary industry enterprises and systems appropriate for the area.</i> • <i>To minimise the fragmentation and alienation of resource lands.</i> • <i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i> • <i>To maintain the rural, cultural and landscape character of the locality.</i>

	<ul style="list-style-type: none"> • To enable development that is compatible with the rural and environmental nature of the land. • To ensure that there is not unreasonable or uneconomic demands for the provision of public infrastructure. <p>Tourist and visitor accommodation is permissible in the zone.</p> <p>Information and education facilities are permissible in the zone.</p> <p>The proposed development is generally consistent with the objectives of the zone.</p>
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Height of Buildings (Clause 4.3)	The subject land has a maximum building height of 8.5m. The maximum building height of both the tourist and visitor accommodation and the recreation building is 7.2m and is therefore compliant.
Heritage conservation (Clause 5.10)	<p>Clause 5.10 was not addressed in the application and was the subject of the RFI. The applicant provided the following response:</p> <p><i>"In December 2018, PLANNERS NORTH contacted Mr. Mich Smith, CEO of Jali Local Aboriginal Land Council advising that an AHIMS search of the land had identified an Aboriginal site within or near the land. A site meeting was subsequently arranged and the letter provided at Attachment A dated 17 April 2019 was subsequently provided by Jali Local Aboriginal Land Council advising that the area considered for development is highly disturbed and highly unlikely to contain Aboriginal objects. It is considered that the consultation undertaken and correspondence provided adequately address the provisions of Clause 5.10."</i></p> <p>No issues were raised in the response issued by Jali. No further issues.</p>
Earthworks (Clause 7.2)	Some excavation will be required for construction and the consent will be conditioned to mitigate impacts. No specific concerns are raised in relation to the matters for consideration in Clause 7.2(3).
Drinking water catchments (Clause 7.4)	<p>The subject land is located within the Wilsons River Catchment and Skinners Creek borders the property. The application was referred to Rous Water. A response was received on 16 June 2020 (CM 20/43003). The subject land slopes and drains to the north.</p> <p>Clause 7.4 states that:</p> <p>(3) Before determining a development application for development on land to which this clause applies, the consent authority must consider the following—</p> <p>(a) whether or not the development is likely to have any adverse impact on the quality and quantity of water entering the drinking water storage, having regard to the following—</p> <p>(i) the distance between the development and any waterway that feeds into the drinking water storage,</p> <p>Comment: The proposed development is within 500m, at the closest point, and 900m, at the farthest point, from Skinners Creek. Groundwater bores are located approximately 400m east (Gaia Resort) and 600m west (Bangalow Wholesale Nursery). The SDS Engineering Services Report submitted with the application indicates that stormwater discharges from the</p>

	<p>development footprint northwards via an existing gully located between cabins 3 and 4 and flows into an existing dam. Stormwater flows from the dam via 2nd order gullies to discharge at Skinners Creek adjacent to the subject property's western boundary approximately 800m from the proposed development footprint.</p> <p>(ii) the on-site use, storage and disposal of any chemicals on the land,</p> <p>Comment: Due to the nature of the proposed development, it is not expected to involve the use or storage of significant quantities of chemicals.</p> <p>(iii) the treatment, storage and disposal of waste water and solid waste generated or used by the development,</p> <p>Comment: An Onsite Wastewater Land Capability Assessment prepared by Tim Fitzroy & Associates dated 17 October 2019 was submitted with the application. Following the site inspection Council's OSSM Officer requested further information regarding flow rate and resident time calculations including pump out intervals and overall loading of proposed OSSM systems. The applicant provided the following response:</p> <p><i>"A revised Onsite Wastewater Land Capability Assessment has been prepared by Tim Fitzroy & Associated and is provided as Attachment D. That report relocates the OSMS for cabins to the western side of the site and replaces the reed beds with an AWTS for the recreation building. In view of the changes documented in the revised wastewater report, the wastewater from cabins will not be pumped, therefore Council's request for clarification regarding synchronising of pumped and gravity fed effluent from the cabins is no longer relevant."</i></p> <p>The report concludes that the site is suitable to assimilate wastewater from:</p> <ol style="list-style-type: none"> 1. Proposed Cabins 1 to 8 (inclusive) to be servicing via a 100mm gravity pipe to an Aerated Wastewater Treatment System (AWTS) and disposal through common (2 x 15.0m long x 2m wide x 0.45m deep) ETA beds. 2. Proposed Recreation Building and Commercial Kitchen will flow by gravity in 100mm pipe to a septic tank system (with outlet filter) with a total capacity of 10,000L, a Aerated Wastewater Treatment System (AWTS) and disposal through common (2 x 16.0m long x 2m wide x 0.45m deep) ETA beds. <p>However, following the submission of revised plans which amended all cabins to be Cabin Type 2 (which have 12 bedrooms and the capacity for 24 people) discussions were held with Council's OSSM Officer. A revised OSSM report was submitted on 4 June 2020 (CM 20/40683) which concludes:</p>
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1. Proposed Cabins 1 to 8 (inclusive) to be serviced via a 100mm gravity pipe to a 5,000L septic tank and thereafter an Aerated Wastewater Treatment System (AWTS) and disposal through common (2 x 15.0m long x 2m wide x 0.45m deep) ETA beds.
2. Proposed Recreation Building and Commercial Kitchen will flow by gravity in 100mm pipe to a septic tank system (with outlet filter) with a total capacity of 10,000L, a Aerated Wastewater Treatment System (AWTS) and disposal through common (2 x 16.0m long x 2m wide x 0.45m deep) ETA beds.

The amendment provides for an additional septic tank. Council's OSSM Officer is supportive of this amendment.

- (b) the cumulative impacts of development on water quality and quantity in the catchment,
- (c) any appropriate measures proposed to avoid the impacts of the development,
- (d) any comments that have been provided in relation to the development by the relevant water supply authority or local or county council exercising water supply functions under Division 2 of Part 3 of Chapter 6 of the [Local Government Act 1993](#),
- (e) whether or not the development would be more suitably carried out on an alternative site.

Comment: Rous Water provided the following comments:

Following a review conducted by Rous of the submitted information, Rous has made comments relating to the following issues:

- (i) *on-site sewage treatment*
- (ii) *Potential mitigation of the overall scale of development/stormwater impacts.*

These issues are addressed below.

i. On-site sewage treatment

Rous has reviewed the application (and the On site Wastewater Land Capability Assessment prepared for Bhadra Property Holdings) and assessed the application against the requirements of the Rous Water On-site Wastewater Management Guidelines (the Rous Guidelines). Overall, based on the statements and commitments made in the application, Rous considers that the proposed systems shall provide for an appropriate level of treatment for this location and situation.

It is stated in the report that the evapotranspiration absorption (ETA) beds are proposed to be located at a distance that exceeds 100m to the nearest waterway (which is minor drainage line that flows in a north-westerly direction through the property, discharging to Skinners Creek). This would normally indicate that Table A2 of the Rous Guidelines should apply. It is noted that for the systems proposed, Table A2 indicates that the pathogen removal capability is Medium, and that the overall suitability of the system would be Medium.

Whilst the general design of the on-site sewage management system

	<p><i>described is considered acceptable, Rous does have some comments regarding important aspects to be addressed in any subsequent approval. Therefore, whilst Rous is agreeable to the proposed systems, Rous recommends the following conditions/issues be included/addressed:</i></p> <ul style="list-style-type: none"> • <i>it is assumed that the development consent shall require the adoption of water efficient fittings/fixtures throughout the development to minimise the hydraulic loading on the system. It is understood that this will include the combined use of reduced flush 6/3 litre water closets, shower-flow restrictors, aerator faucets, and flow/pressure control valves on all water-use outlets.</i> • <i>diversion swales should be installed to prevent the run-on of surface water runoff into the ETA.</i> • <i>as the proposed on-site sewage management system is reliant on mains power to operate the AWTS and associated systems, there is a risk that the system could overflow. To safeguard against this risk, Rous considers it important to ensure that (i) that there is an alarm system that monitors any such failure; and (ii) that any overflow from the system (in the event of failure or extended power outage) be directed to the sub-surface irrigation areas. Normally, Rous would require all treatment vessels to be appropriately bunded where there is a risk of failure, however the combination of a visual alarm and the overflow to absorption areas is considered appropriate.</i> • <i>Rous is concerned to ensure that the ETA is not damaged by stock or vehicle access and requests that a permanent fencing arrangement be installed. It is recommended that the ETA and immediate surrounds be fenced and sign-posted to keep children and vehicles out.</i> • <i>Due to the scale of the on-site treatment and the fact that the ETA beds actually appear to be close to the 100 m buffer required from all surface water drainage features (including the abovementioned drainage line that is shown in Council's GIS system), the areas surrounding and downgradient of the ETA beds – extending between the ETA beds and the receiving waters should be vegetated by native vegetation – this can be a combination of appropriate native trees or groundcovers (Lomandras or equivalent), which would assist with evapotranspiration of any surcharge. It is further noted that the fencing should also fence off the native vegetation areas to be established to similarly ensure that these plantings are not damaged by vehicle/stock access.</i> • <i>The On site Wastewater Land Capability Assessment states that "Wastewater sourced from cooking classes is suspected to be higher than domestic effluent in Fats, Oils & Grease (FOG). However, the use of a septic tank treatment with the suggested scum and sludge storage will be adequate to cater for the FOG." Given that the wastewater sourced from cooking classes is suspected to be higher than domestic effluent in Fats, Oils & Grease, then Council should specify a requirement for the quarterly service and inspections completed by the servicing agent for the AWTS also include inspection and pump out of the scum and sludge storage.</i> <p>ii. Mitigating scale of development</p>
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	<p><i>A second issue identified by Rous is the overall scale of site disturbance and development, both during construction/operation. Whilst it is acknowledged that information provided by the proponent indicates that “stormwater drainage is able to be adequately accommodated on the subject rural allotment”, there will still be runoff to receiving waters from roadways and hard surfaces to the adjacent slope. It is recognised that the vast majority of the stormwater generated from roof runoff is harvested for the water supply to the proposed development. Nevertheless, it is recommended that - in order to meet contemporary standards and minimise the impact on receiving waters – that consideration should be provided to the opportunity to apply water sensitive design elements such as grassed swales to encourage infiltration of any such runoff. If integrated with landscaping/stormwater plantings it may be possible to improve water quality and biodiversity outcomes arising from the proposed development. Such enhancement could also be integrated with the recommended planting between the ETA areas of the on-site sewage management systems and the drainage lines at the property.</i></p> <p>Comment: Council’s OSSM Officer also reviewed the response from Rous County Council and indicated that the OSSM Approval to Install would be conditioned as suggested by Rous County Council.</p> <p>(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development is designed, sited and will be managed to avoid any significant adverse impact on water quality and flows.</p> <p>Comment: Given the above amended design to OSSM systems, and conditions that will be imposed on the Approval to Operate, and appropriate management of these systems, it is considered that the development is designed and site to avoid adverse impacts on water quality and flow.</p>
<p>Essential services (Clause 7.7)</p>	<p>Clause 7.7 provides that all essential services, including water, electricity, sewage, stormwater, access and telecommunication services are available to the subject land.</p> <p>7.7 Essential services</p> <p>(1) The objective of this clause is to ensure that development is supplied with adequate and appropriate levels of infrastructure servicing.</p> <p>(2) Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—</p> <p>(a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage, (d) stormwater drainage or on-site conservation, (e) suitable vehicular access, (f) telecommunication services.</p> <p><u>Water</u></p> <p>The subject land is not connected to Council’s reticulated water supply. A Water Quality Assurance Program prepared by Tim Fitzroy & Associates dated 21 October 2019 in accordance with the NSW Health (2008) Private</p>

	<p>Water Supply Guidelines and the NHMRC (2011) Australian Drinking Water Guidelines, to satisfy Public Health requirements, was submitted with the application.</p> <p>An Engineering Services Report prepared by SDS Civil Enterprises dated October 2012 was submitted with the application which indicated that rainwater tanks would be installed for the cabins (2100L/cabin), the education and information building (4050L) and a 10,000L tank for bush fire-fighting purposes. Further information was requested and provided by SDS Civil Enterprises dated 1 April 2020 which confirmed the following supply would be provided on-site:</p> <ul style="list-style-type: none"> - Two 25000L tanks dedicated for bush fire fighting purposes located to the west of cabin 7 and 8 - One 60000L tank dedicated for bush fire fighting purposes located beneath car park adjacent to the recreation building - Two 110000L below ground tanks for potable supply. <p><u>Electricity</u></p> <p>The development does not encroach on the minimum safe distance requirements in regards to structures/buildings and overhead/underground power lines.</p> <p><u>Sewer</u></p> <p>The subject land is not connected to Council's reticulated system. A Revised Onsite Wastewater Land Capability Assessment (Tim Fitzroy & Associates) was submitted on 4 June 2020 (CM 20/40512) which concluded that the site is suitable to assimilate wastewater from:</p> <ol style="list-style-type: none"> 1. Proposed Cabins 1 to 8 (inclusive) to be serviced via a 100mm gravity pipe to a 5,000L septic tank and thereafter an Aerated Wastewater Treatment System (AWTS) and disposal through common (2 x 15.0m long x 2m wide x 0.45m deep) ETA beds. 2. Proposed Recreation Building and Commercial Kitchen will flow by gravity in 100mm pipe to a septic tank system (with outlet filter) with a total capacity of 10,000L, a Aerated Wastewater Treatment System (AWTS) and disposal through common (2 x 16.0m long x 2m wide x 0.45m deep) ETA beds. <p>Discussions were held with Council's OSSM Officer regarding the occupancy/bedroom numbers of the tourist and visitor accommodation cabins. While the OSSM reporting has been based on 4 x 1 bedroom and 4 x 2 bedrooms, it is calculated on 20EP. Initial plans showed only 10 bedrooms, and the revised plans where all cabins are type 2 show 12 bedrooms, thus allowing the cabins at full capacity to house 24 people.</p> <p>Council's OSSM Officer is supportive of the revised report and conclusion.</p> <p><u>Stormwater drainage or on-site conservation</u></p> <p>The development does not encroach on any easement or the zone of influence of any existing water, sewer or drainage mains.</p> <p><u>Telecommunication services</u></p>
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	<p>All required telecommunication services are available to the subject site.</p> <p><u>Access</u></p> <p>Council's Development Engineer provided the following comments in relation to access:</p> <p><i>Site Access, Internal Driveways and Parking Design</i></p> <p>The existing driveway at the site is unsealed. The Northern Rivers Local Government Manuals require the driveway to be sealed from the existing road pavement in Fernleigh Road through to 3.0m inside the property boundary.</p> <p>Sight distances at the access driveway are approximately 700m to the southwest and 160m to the North East. This provides sufficient sight distance in both directions to comply with AS 2890.</p> <p>The application proposes a 3.0m seal on a 4.0m formation. A 4.0m gravel or sealed carriageway shall be required for the internal driveway as per the requirements of the NSW Rural Fire Service "Planning for Bush Fire Protection".</p> <p>Notwithstanding the above engineering advice, there are dwelling houses in close proximity to the internal driveway of the subject land and traffic noise and dust has been raised as potential issues. Council's Environmental Health Officer has requested that a condition be imposed requiring that the driveway be constructed of all weather, dust free construction from Fernleigh Road to the creek which is approximately 280m into the property.</p> <p>Additional information submitted by SDS Civil Enterprises dated 1 April 2020 proposes that New Sealed Entry Works be undertaken to CH160. The information provides that Driveway Access Details – Layout Plan C1 dated May 2019 have been updated to reflect the following:</p> <ul style="list-style-type: none"> (i) <i>Upgrading of the existing driveway to a 3m seal on 4m formation standard to CH160.</i> (ii) <i>Ensuring that driveway widths comply with NSW Rural Fire Service requirements of a 4m formation width.</i> <p>The subject plan is below. The creek is located at approximately CH280 which would necessitate the driveway sealing to be undertaken for approximately 100m extra distance than that proposed.</p> <p>Given that the internal access driveway passes within 40m, 120m and 90m of adjacent dwelling houses, the size of the development and traffic impacts, it is considered reasonable to request that the internal driveway access is sealed to the location of the creek (i.e. CH280).</p>
<p>Rural and nature-based tourism development (Clause 7.9)</p>	<p>Clause 7.9 states:</p> <ul style="list-style-type: none"> (1) <i>The objective of this clause is to ensure that services and facilities provided for tourists in rural and natural areas do not adversely impact on the agricultural production, scenic or environmental values of the land.</i> (2) <i>This clause applies to land in the following zones—</i>

	<p>(a) <i>Zone RU1 Primary Production,</i> (b) <i>Zone RU2 Rural Landscape.</i></p> <p>(3) <i>Development consent must not be granted to tourism development on land to which this clause applies unless the consent authority is satisfied that—</i></p> <p>(a) <i>there is, or will be, adequate vehicular access to and from a road, other than a classified road, taking into account the scale of the development proposed, and</i></p> <p>Comment: See previous discussion under Clause 7.7 regarding access.</p> <p>Given that submissions object to potential noise and dust generated from the unsealed driveway, and the proximity to adjoining dwelling houses, it is considered reasonable to request that the internal driveway access is sealed to the location of the creek (i.e. CH280).</p> <p>(b) <i>the development is small scale and low impact, and</i></p> <p>Comment: Small scale tourist and visitor accommodation is development that is predominantly residential in character and scale and that does not consist of larger commercial activities such as boarding houses, backpackers accommodation or hotel or motel accommodation.</p> <p>The proposed development comprises five buildings including four buildings containing eight cabins, and the recreation/kitchen building. While the development of eight holiday cabins could be considered small scale as a stand-alone development, the total footprint of the buildings proposed in this development equals 1245m².</p> <p>The footprints of existing buildings on the subject land are approximately 328m² (dwelling house); 170m² (holiday cabin); and 195m² (farm shed); a total of 693m². Should this application be approved, buildings would comprise approximately 2000m² or 0.423% of the entire property.</p> <p>The existing property currently provides accommodation for 10 people i.e. 6 (existing dwelling) and 4 (existing holiday cabin). The proposed tourist and visitor accommodation has the ability to house an additional 24 people (at full capacity). Cooking classes are proposed for a maximum of 12 people. Staff have been estimated at 4 people. At full capacity the proposed development has the potential to increase the number of people onsite from 10 to 46.</p> <p>In comparing surrounding land uses, Gaia Resort which adjoins the subject land to the north has a total of 24 accommodation units, office spaces, two yoga rooms, restaurant, day spa and ancillary buildings. The land is considerably smaller in size (8.136 ha) and the footprint of its development comprises approximately 1.8% of the land area. The commercial nursery which adjoins the property to south west appears to have a greater percentage of land area developed. The proposed development is therefore considered to be of a scale that is reasonable.</p> <p>(c) <i>the development is complementary to the rural or environmental attributes of the land and its surrounds, and</i></p> <p>Comment: The only rural pursuit undertaken on the subject land is the</p>
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	<p>grazing of approximately 35 cattle. The subject land has an area of 47.27 hectares. It is considered that the proposed development has been sited in close proximity to the existing development and as such will not be detrimental to the rural or environmental attributes of the subject land. In terms of surrounding lands, the proposed development is not highly visible from the immediate adjacent properties, however the development may be visible from further afield, but given the topography, only from those properties to the north.</p> <p><i>(d) the development will not have a significant adverse impact on agricultural production, amenity or significant features of the natural environment.</i></p> <p>Comment: The only rural pursuit undertaken on the subject land is the grazing of cattle, which it is the intention of the property owners to continue such and the proposed development is not considered to have any adverse impact on this production. The proposed development is sited on cleared land and away from the significant features of the natural environment. However, given the nature of the proposed use of the land and the potential for increased traffic as a result, the amenity of the locality may be adversely impacted.</p> <p><i>(4) Development consent must not be granted to development for the purpose of tourist and visitor accommodation on a lot that is land to which this clause applies unless—</i> <i>(a) a lawfully erected dwelling house or dual occupancy (attached) is situated on the lot, or</i> <i>(b) a dwelling house may be erected on the lot under this Plan.</i></p> <p>Comment: The subject land enjoys a dwelling entitlement and there is a lawfully erected dwelling house on the land.</p> <p><i>(5) Development consent must not be granted to development under subclause (4) if the development—</i> <i>(a) includes an ancillary caretaker's or manager's residence, or</i> <i>(b) is for the purpose of more than 1 bed and breakfast accommodation.</i></p> <p>Comment: The proposed development does not include a caretaker's or manager's residence and is not for the purpose of a bed and breakfast.</p> <p>It is therefore considered that the proposed development is compliant with Clause 7.9 of the BLEP.</p>
<p>Schedule 2 Exempt development</p>	<p>It is suggested in the Bushfire Threat Assessment report that it is an objective of the owners of the property to "Open a farm gate stall within the property".</p> <p>It is noted that Roadside stalls are exempt development provided that:</p> <p><i>(1) This clause applies to the use of land for a roadside stall for the sale of only agricultural produce.</i> <i>(2) The roadside stall—</i> <i>(a) must be located on land within Zone RU1 Primary Production or</i></p>

	<p><i>Zone RU2 Rural Landscape, and</i> <i>(b) must be located wholly on private property, and</i> <i>(c) must not be located on land that is adjacent to a classified road, and</i> <i>(d) must not have a footprint greater than 4m2.</i></p> <p><i>(3) No more than 1 roadside stall may be used on any landholding.</i> <i>(4) Any relevant approval issued under the Roads Act 1993 must be obtained.</i></p> <p>A farm gate stall does not form part of this application and will not be considered further in this assessment.</p>
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State Environmental Planning Policies (SEPPs)

Relevant SEPPs	Comments/Is consistency with these provisions achieved?
SEPP 55 – Remediation of Land	<p>A Preliminary Site Investigation prepared by Tim Fitzroy & Associates dated 17 October 2019 was submitted with the application which concluded that the land is suitable for the proposed use.</p> <p>Council's Environmental Health Officer provided the following comments:</p> <p><i>Tim Fitzroy and Associates was commissioned to undertake a Preliminary Site Assessment for contaminates of concern to support the current development application for the construction and use of 4 x 2 bedroom cabins and associated infrastructure and activities at 841 Fernleigh Road. Further to a review of the site history which included historic aerial investigation, 12 soil samples were collected and tested for contaminants of potential concern at the location of the proposed cabins. The submitted information did not identify levels of contaminates of concern at the site and all samples complied with the requirements of the NEPM (2013). In regard to the submitted information, it would be reasonable to expect that the site was free of contamination which would pose a health risk to future residents.</i></p> <p>The consent will be conditioned such that should new information come to light during construction works, Council or the Principal Certifying Authority must be notified.</p>
SEPP - Primary Production and Rural Development.	No issues raised.

4.15 (1) (a) (ii) – any proposed instrument that is or has been the subject of public consultation under the EP&A Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)

Draft EPI/Planning Proposal	Comments/Is consistency with these provisions achieved?
Draft Planning Proposal – Farm Gate Retail Activity on Rural Land	See previous comments regarding Schedule 2 of the LEP. Planning proposal adopted during the assessment of this application.
Draft Planning Proposal – RU1 and RU2 for drainage purposes	This draft proposal seeks provision to permit subdivision for drainage purposes on RU1 and RU2 zoned land. No issues raised as a result of this application.
Draft Amendment to State Environmental Planning Policy 44 – Koala Habitat Protection.	There are two small areas identified on the subject property as <i>Secondary A</i> vegetation and several areas are identified as <i>Other</i> in the KMS 2016 Preferred Koala Habitat. No vegetation is required to be removed for this development. The owners are actively rehabilitating the subject property. No issues raised. It is noted that this SEPP has been replaced by SEPP (Koala Habitat Protection) 2019.
Draft State Environmental Planning Policy - Remediation of Land.	See previous comments in regards to SEPP 55.
Draft Amendment to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.	Not applicable.
Draft Amendment to State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007.	Not applicable.
Draft Amendment to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.	Not applicable.

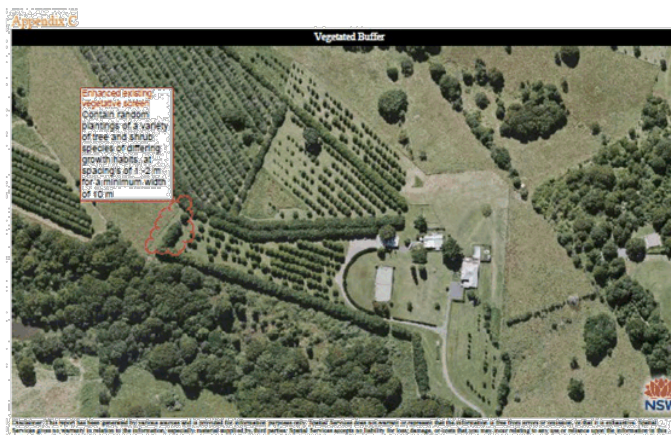
4.15 (1) (a) (iii) – any development control plan (DCP)

DCPs currently in force:	
Ballina Shire Development Control Plan 2012	<input checked="" type="checkbox"/>

Ballina Shire DCP 2012	Comments/Assessment of proposal against provisions of DCP
Chapter 2 – General and Environmental Considerations	Part 2 Planning Objectives The proposal generally complies with the overarching objectives of Chapter 2.
	3.1 Land Use Conflict (LUCRA) A LUCRA was submitted with the application which concluded that the subject site is suitable for the proposed development provided that the following condition is imposed:

A vegetated buffer (as per Appendix C) based on the following criteria be installed on the subject site along the western side of the proposed development:

- contain random plantings of a variety of tree and shrub species of differing growth habits, at spacings of 1–2 m for a minimum width of 10 m.
- include species with long, thin and rough foliage which facilitates the more efficient capture of spray droplets;
- provide a permeable barrier which allows air to pass through the buffer. A porosity of 0.5 is acceptable (approximately 50% of the screen should be air space);
- foliage is from the base to the crown;
- include species which are fast growing and hardy;
- have a mature tree height at least 3m;
- include an area of at least 5m clear of western boundary and 5m clear of the proposed development.



Council's EHO provided the following comments:

As the minimum land use buffers have not been met, the proposal was supported by the submission of a Land Use conflict Risk Assessment prepared by Tim Fitzroy and Associates. The LUCRA identified that 2 potential sources of land use conflict exist between the proposed development and existing land uses. The existing operations which may be impacted are a:

1. *Macadamia Plantation*
2. *Plant Nursery Operation*

There is the potential impact of emissions, noise, dust or odour from the macadamia plantation to affect visitors of the tourist facility. However, the separation distance and vegetative buffering should limit the exposure to any such emissions and render this eventuality as unlikely. In this regard, a significant existing vegetative buffer exists along the southern boundary which will provide screening and entrapment for fugitive dust and spray particles from agricultural activities. As the existing vegetation to the south will provide buffering and is mentioned within the submitted LUCRA, it is considered that this area of vegetation forms part of the barrier and must be retained to provide protection from offsite impacts. A condition will be applied to protect this area of vegetation.

Council's EHO has recommended that the following condition be

	<p>imposed on the consent:</p> <p>Vegetated buffer The vegetated buffer, as shown within the Land Use Conflict Risk Assessment – Tim Fitzroy and Associates, Appendix C, dated 17 October 2019 must be installed and maintained in perpetuity. The vegetated buffer must:</p> <ul style="list-style-type: none"> • contain random plantings of a variety of tree and shrub species of differing growth habits, at spacing's of 1–2 m • have a minimum width of 10 metres • include species with long, thin and rough foliage which facilitates the more efficient capture of spray droplets; • provide a permeable barrier which allows air to pass through the buffer • provide foliage from the base to the crown • include species which are fast growing and hardy; • have a mature tree height at least 4 metres • include an area of at least 5m clear of the southern boundary • be maintained in perpetuity • obtain an optical porosity of 0.3.
	<p>3.3 Natural Areas and Habitat A small portion of the land is mapped within the buffer to the natural areas, however the site of the proposed development is cleared and no vegetation is to be removed as a result of this application. The subject property is being actively rehabilitated by the current owners. No further issues raised.</p>
	<p>3.4 Potentially Contaminated Land Refer to previous SEPP 55 comments.</p>
	<p>3.5 Land Slip/Geotechnical Hazard The subject land is mapped as partially effected by landslip (Dept of Mineral Resources). The consent will be conditioned accordingly.</p>
	<p>3.6 Mosquito Management The subject land is mapped as Elevated Land (Above 10m Contour).</p> <p>Council's EHO has provided the following comments:</p> <p><i>The subject site is identified as elevated lands and may be subject to mosquito presence and nuisance biting.</i></p> <p>Should the application be approved, the consent will be conditioned to ensure that insect screening is provided to habitable buildings and that rainwater tanks are fitted with screening to prevent mosquito breeding and insect entry.</p>
	<p>3.7 Waste Management A Site Waste Minimisation and Management Plan was submitted with the application.</p>

	<p>Council's EHO is satisfied and should the application be approved, the consent will be conditioned to ensure that construction and operational/use waste is disposed of appropriately.</p>
	<p>3.8 On-site Sewage Management Systems</p> <p>Existing on the subject property are two onsite wastewater systems including:</p> <ul style="list-style-type: none"> • Septic tank, reed bed and evapo transpiration beds which service the main dwelling house • Septic tank, evapo transpiration beds which service the existing tourist and visitor accommodation. <p>An OSSM report was submitted with the application, Tim Fitzroy & Associates dated 17 October 2019. The report concluded as per below:</p> <ol style="list-style-type: none"> 1. Proposed Cabins 5/6 and Cabin 7/8 to be servicing individually by a 2,050L pump well via a 50mm rising main to an Aerated Wastewater Treatment System (AWTS) and disposal through common (2 x 15.0m long x 2m wide x 0.45m deep) ETA beds. 2. Proposed Cabins 1, 2, 3 and 4 via a 100mm gravity pipe to the above common AWTS and ETA beds; 3. Proposed Recreation Building and Commercial Kitchen will flow by gravity in 100mm pipe to a septic tank system (with outlet filter) with a total capacity of 10,000L, a reed bed with a total area of 28m² and disposal through common (2 x 16.0m long x 2m wide x 0.45m deep) ETA beds. <p>Council's OSSM officers requested further information regarding flow rate and resident time calculations including pump out intervals and overall loading of proposed OSSM systems. (CM AD2020/000146).</p> <p>This report concluded:</p> <ol style="list-style-type: none"> 1. Proposed Cabins 1 to 8 (inclusive) to be servicing via a 100mm gravity pipe to an Aerated Wastewater Treatment System (AWTS) and disposal through common (2 x 15.0m long x 2m wide x 0.45m deep) ETA beds. 2. Proposed Recreation Building and Commercial Kitchen will flow by gravity in 100mm pipe to a septic tank system (with outlet filter) with a total capacity of 10,000L, a Aerated Wastewater Treatment System (AWTS) and disposal through common (2 x 16.0m long x 2m wide x 0.45m deep) ETA beds. <p>Discussions were held with Council's OSSM Officer regarding the occupancy/bedroom numbers of the tourist and visitor accommodation cabins. While the OSSM reporting has been based on 4 x 1 bedroom and 4 x 2 bedrooms, it is calculated on 20EP. Initial plans showed only 10 bedrooms, and the revised plans where all cabins are type 2 show 12 bedrooms, thus allowing the cabins at full capacity to house 24 people.</p> <p>A Revised Onsite Wastewater Land Capability Assessment (Tim Fitzroy & Associates) was submitted on 4 June 2020 (CM 20/40512) which concluded that the site is suitable to assimilate wastewater from:</p>

	<p>1. Proposed Cabins 1 to 8 (inclusive) to be serviced via a 100mm gravity pipe to a 5,000L septic tank and thereafter an Aerated Wastewater Treatment System (AWTS) and disposal through common (2 x 15.0m long x 2m wide x 0.45m deep) ETA beds.</p> <p>2. Proposed Recreation Building and Commercial Kitchen will flow by gravity in 100mm pipe to a septic tank system (with outlet filter) with a total capacity of 10,000L, a Aerated Wastewater Treatment System (AWTS) and disposal through common (2 x 16.0m long x 2m wide x 0.45m deep) ETA beds.</p> <p>Council's OSSM Officer is supportive of the revised report and conclusion.</p>
	<p>3.9 Stormwater Management Council's Development Engineer provided the following comments with regard to stormwater management:</p> <p><i>A stormwater plan has not been provided and the requirements of DCP Chapter 2 Stormwater Management have not been addressed. The site has adequate area to provide any stormwater treatment and detention requirements to comply with the DCP. The application can therefore be conditioned to require this information prior to the issue of the Construction Certificate.</i></p>
	<p>3.10 Sediment and Erosion Control</p> <p>Council's Environmental Health Officer provided the following comments with regard to sediment and erosion control:</p> <p><i>The amount of dust which may be generated is expected to be noticeable and may directly impact on the air quality of residents located adjacent to the entrance at Fernleigh Road. Additionally, surface water may be impacted in rain events and shed the dust and exposed soils to waterways affecting water quality of nearby streams. The immediate surrounding environment and the development will benefit from the requirement to seal the surface of the roadway to a point at the creek located some 300 metres within from Fernleigh Road to prevent nuisance dust emissions and noise.</i></p> <p>Should the application be approved, the consent will be conditioned to ensure that the driveway is sealed from Fernleigh Road to the creek (CH280) and that suitable erosion and sediment controls are in place during construction.</p>
	<p>3.11 Provision of Services The subject land has access to a private water supply, electricity, OSSMS, drainage, road and telecommunication services.</p> <p>See previous comments in this assessment under Clause 7.7 and 7.9 of the BLEP 2012.</p>
	<p>3.12 Heritage Clause 5.10 of the BLEP 2012 was not addressed in the application. The RFI requested that Cl.5.10 be addressed. The applicant provided</p>

	<p>the following response:</p> <p><small>In December 2018, PLANNERS NORTH contacted Mr. Mick Smith, CEO of Jali Local Aboriginal Land Council advising that an AHIMS search of the land had identified an Aboriginal site within or near the land. A site meeting was subsequently arranged and the letter provided at Attachment A dated 17 April 2019 was subsequently provided by Jali Local Aboriginal Land Council advising that the area considered for development is highly disturbed and highly unlikely to contain Aboriginal objects. It is considered that the consultation undertaken and correspondence provided adequately address the provisions of Clause 5.10.</small></p> <p>No issues were raised in the response from Jali who determined that the land is highly disturbed and unlikely to contain any Aboriginal objects.</p>										
	<p>3.13 Drinking Water Catchment The subject land is within the Wilsons Creek Drinking Water Catchment. Following the submission of additional information the application was referred to Rous County Council on 16 April 2020 (CM 20/ 27688).</p> <p>Resent to Rous on 3 June 2020. Revised OSSM report sent to Rous on 4 June 2020. Response received 16 June 2020 (CM 20/43003).</p> <p>Council's EHO provided the following comments:</p> <p><i>"The property is not connected to Council reticulated water supply and therefore the water supply will need to ensure it is safe and does not contaminate food or make visitors sick."</i></p> <p>Should the application be approved, the consent will be conditioned accordingly.</p>										
	<p>3.15 Crime Prevention through Environmental Design The application was not referred to NSW Police. The application did not address CPTED. The proposed development is unlikely to present as having a high risk of crime. The existing dwelling house is nominated as the manager's residence and should the application be approved, the consent will be conditioned to ensure an Operational Management Plan is implemented prior to use.</p>										
	<p>3.19 Car Parking and Access</p> <p>See previous comments in this assessment regarding access.</p> <p>Council's Development Engineer has provided the following comments with regard to parking:</p> <p><i>Parking Design</i> Council's parking requirements are described in:</p> <ul style="list-style-type: none"> • DCP Chapter 2, section 3.19 Car Parking and Access • DCP Chapter 7 - Rural Living and Activity <p>The following requirements apply:</p> <table border="1" data-bbox="587 1608 1327 1744"> <thead> <tr> <th colspan="2">Council Requirement</th> <th rowspan="2">Proposed Number</th> <th rowspan="2">Required Number of Parking Spaces</th> </tr> <tr> <th>Use</th> <th>Rate</th> </tr> </thead> <tbody> <tr> <td>Tourist Cabins</td> <td>1 spaces per</td> <td>8 cabins</td> <td>8</td> </tr> </tbody> </table>	Council Requirement		Proposed Number	Required Number of Parking Spaces	Use	Rate	Tourist Cabins	1 spaces per	8 cabins	8
Council Requirement		Proposed Number	Required Number of Parking Spaces								
Use	Rate										
Tourist Cabins	1 spaces per	8 cabins	8								

	cabin		
Cooking Classes	1 space per 3 students	12 students	4
		Total required	12
<p>The development proposes to provide 13 car parking spaces inclusive of two disabled spaces. The development therefore complies with the requirements of Council's DCP.</p>			
<p>3.21 Bushfire Management The subject land is mapped as bush prone land. A Bushfire Threat Assessment report prepared by BCA Check dated 8th October 2019 was submitted with the application. The application was referred to NSW Rural Fire Service. A response was received on 24 February 2020 which is attached to the consent as Schedule 2.</p>			

<p>Chapter 7: Rural Living and Activity</p>	<p>The objectives of this Chapter of the DCP are:</p> <ol style="list-style-type: none"> a. <i>Protect agricultural land, particularly land that is identified as 'State significant' or 'regionally significant' farmland as referenced in the Northern Rivers Farmland Protection Project, from inappropriate development;</i> b. <i>Preserve rural resources by ensuring that land is not effectively sterilised by being developed or encroached upon by urban or other incompatible uses;</i> c. <i>Minimise rural land use conflict through a number of strategies including provision of land use buffers, land use regulation and encouragement of best practice in rural land practices;</i> d. <i>Encourage and provide for quality rural development within the shire;</i> e. <i>Encourage development of a scale and nature which will not adversely impact on the existing amenity of the area;</i> f. <i>Maintain or improve cultural and environmental values of rural land; and</i> g. <i>Provide information, guidance and controls for specific land uses that occur on rural land.</i> <p>The subject land is mapped as Regionally Significant Farmland. It is considered that the existing agricultural pursuit undertaken on the property, i.e. low intensity cattle grazing, could continue on the subject land with the addition of this development, and that the development has been sited such that the land is not effectively sterilised.</p> <p>The potential for land use conflict has been considered and of particular concern are the macadamia plantation and the plant nursery to the west of the subject property which were identified in the LUCRA. There is existing vegetation between the proposed development and this boundary and should the application be approved the consent would be conditioned to provide a vegetated buffer to provide further protection.</p> <p>The proposed development is considered a quality rural development and the nature of the development is considered suitable.</p> <p>The proponents are actively rehabilitating and improving the</p>
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	<p>environmental values of the subject land, and through the information and education facility will provide cooking classes (i.e. education) using locally sourced and grown produce.</p> <p>The proposed development is therefore generally consistent with the objectives of Chapter 7 of the DCP.</p>
	<p>3.3. Rural Tourist and Visitor Accommodation</p> <p>The objectives of this section of the DCP are:</p> <ol style="list-style-type: none"> a. <i>Provide for the establishment and operation of diverse small scale tourist and visitor accommodation within rural and environmental protection zones within Ballina Shire;</i> b. <i>Ensure that facilities are designed and constructed so as to maintain rural character and amenity, productive agricultural use of land and environmental values;</i> c. <i>Encourage visitor interaction with the rural and natural environment;</i> d. <i>Ensure the provision of a satisfactory level of service to guests and that such premises meet acceptable access, community health and fire safety standards; and</i> e. <i>Encourage environmental repair, restoration and management activities in conjunction with rural tourist development.</i> <p>It is considered that the proposed tourist and visitor accommodation and ancillary communal recreation building and information and education facility is generally consistent with these objectives, as it will provided for diverse small scale tourist and visitor accommodation, it maintains the character of the rural landscape, provides visitor interaction with the rural environment and provides a satisfactory level of service to guests.</p> <p>Development controls are:</p> <ol style="list-style-type: none"> i. <i>Tourist and visitor accommodation uses, where permissible with consent in the applicable zone, may only occur on land that is subject to a dwelling entitlement in accordance with the provisions of the Ballina LEP;</i> <p>Comment: The subject land has an existing approved dwelling house and therefore complies.</p> <ol style="list-style-type: none"> ii. <i>Tourist and visitor accommodation must be small scale and compatible with the characteristics of the site and its surrounds (particularly with respect to agricultural land use and environmental values);</i> <p>Comment: <i>“small scale means a scale that corresponds to that of residential uses in a rural or environmental locality.”</i></p> <p>The proposed tourist and visitor accommodation is designed such that four buildings comprise eight cabins. The design is described below:</p> <p><u>Cabin Type 2</u> Cabins 2, 4, 6, 8 (two bedroom, two ensuites, living, entry, porch and terrace) – - Area - 75m² enclosed and 30m² terrace Cabins 1, 3, 5, 7 (one bedroom, ensuite, living, kitchen, entry, porch and</p>

terrace) –

- Area - 75m² enclosed and 30m² terrace

The total footprint of the cabins is approximately 840m².

The design is considered compliant with the DCP as the internal floor area of each cabin is 75m². The cabins are considered to be compatible with the characteristics of the site and its surrounds, being located on an elevated section of the property with a northerly aspect. However, it must also be considered that there is already an existing approved holiday cabin, bringing the total number of accommodation cabins on the subject property to nine.

Given that the communal recreation building is intended to be used as a lodge for guests staying on the property, i.e. within the tourist and visitor accommodation, then the scale of that building must also be considered. The communal recreation building and information and education facility (kitchen) is a substantial building of approximately 405m². In total, the development comprises buildings with a footprint of 1245m².

It was suggested to the applicant in the pre-da lodgement meeting that the proposed communal building was of a scale more akin to a "function centre" which is prohibited in the zone. The application was supported by legal advice which negates this argument.

In addressing this control the applicant provided the following response:

"The proposal aims to encourage visitor interaction with the rural and natural environment and will provide for the repair restoration and management of the site. The proposed development is small scale and compatible with the characteristics of the site and surrounding locality. The cabins have been sited in a clustered manner and present as small scale buildings. Buildings have been sited to minimise potential impacts on existing agricultural pursuits on this subject site and surrounding land. The information and education facility and ancillary recreation building for guests are centrally located to the cabins and in the vicinity of the existing buildings on the site."

Small scale tourist and visitor accommodation is development that is predominantly Residential in character and scale. The DCP considers that not less than three and not more than eight accommodation units are best suited to meet the planning objectives of Clause 3.3. Previous approvals have been issued for tourist and visitor accommodation consisting of one or two cabins, and as such this is only a guide. Given the size of the subject land, the proposed development is considered to be of a reasonable scale and compatible with the characteristics of the site and its surrounds.

iii. Tourist and visitor accommodation must comply with the disability access provisions under the Building Code of Australia;

Comment: Cabin 1 is nominated as an accessible cabin. Disabled facilities are also provided in the Recreation Communal Area and Kitchen. Detailed drawings demonstrating compliance with the required access provisions should be reviewed by the PCA prior to issue of a Construction Certificate.

iv. Tourist and visitor accommodation must be temporary and shall not be utilised or let for long term or permanent accommodation. Guests must not be

	<p><i>accommodated for more than 42 consecutive days with an interval of at least 14 days between occupancies, or for more than a total of 90 days in any 12 month period;</i></p> <p>Comment: The consent, should the application be approved, will be conditioned accordingly.</p> <p><i>v. Tourist and visitor accommodation must include a manager's residence on the site, comprised of either the primary residential dwelling or one dwelling in a dual occupancy arrangement. The manager's residence must be in a location suitable to facilitate on site management of the accommodation units;</i></p> <p>Comment: The existing dwelling house has been nominated as the manager's residence and will be occupied by the owners of the subject land. The consent, should the application be approved, will be conditioned accordingly.</p> <p><i>vi. Tourist and visitor accommodation facilities are subject to the following configuration and design requirements:</i></p> <ul style="list-style-type: none"> • <i>Clustering of buildings within the area established by the radius specified in Table 3.1 (unless it can be demonstrated that a dispersed arrangement provides for a more efficient use of the site and does not adversely impact on the use of productive agricultural land or the environmental characteristics of the land, both on site and off site);</i> • <i>Utilisation of a single access point from the public road network to service both the accommodation and residential use of the site;</i> • <i>Total internal floor area not exceeding 75m² per accommodation unit;</i> • <i>Maximum of 2 bedrooms and 1 kitchenette per accommodation unit; and</i> • <i>Provision of at least one defined car parking space per accommodation unit.</i> <p>Comment: The proposed development has been designed within a clustering radius of 90m, i.e. the cabins, communal recreation building and information and education facility. The DCP requirement specifies for 7 or more cabins, the clustering radius be 90m plus 10m for each additional unit. While the proposed development is compliant with the DCP the existing holiday cabin is outside this cluster (by approximately 50m). The existing holiday cabin was approved via DA 2012/465 on 21 February 2013 and was at that time compliant with all the relevant DCP and LEP provisions. It is considered that if the proposed developed was clustered around the existing cabin, the impact on neighbouring properties, particularly to the north, would have been greater. This departure is therefore considered acceptable.</p> <p>The proposed development utilises the existing single access point from Fernleigh Road and is therefore compliant.</p> <p>The cabins have been designed with 75m² internal floor area, a maximum of two bedrooms and a kitchenette and the design is therefore compliant.</p> <p>Eight car spaces plus one PWD space have been provided and is therefore compliant.</p> <p>It is therefore considered that the tourist and visitor accommodation is compliant with this section of the DCP.</p>
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	<p>3.7 Building Lines and Setbacks</p> <p>The proposed development is setback greater than 20m from the front boundary and 10m from the side boundary and is therefore compliant.</p>
	<p>3.8 Roads, Vehicular Access and Parking</p> <p>The objectives of this section of the DCP are:</p> <ul style="list-style-type: none"> a. <i>Provide adequate on site car parking for all types of rural development;</i> b. <i>Ensure car parking is designed in accordance with relevant standards and has adequate space and provision for vehicular turning areas to ensure all vehicles can enter and leave the site in a forward direction;</i> c. <i>Ensure access to the site has the capacity to cope with likely traffic loads including heavy vehicles;</i> d. <i>Ensure site accesses have adequate sight distances and are designed to ensure that all vehicles are able to safely enter and exit the site to maintain the safety and integrity of the road network; and</i> e. <i>Minimise disturbance to landform.</i> <p>Comment: See previous comments and Development Engineers comments in regard to Roads, Access and Parking.</p> <p>3.8.3 Development Controls</p> <ul style="list-style-type: none"> i. <i>Where a proposed development has the potential to generate significant additional traffic and require substantial car parking, a traffic study will be required;</i> <p>Comment: An Engineering Services Report prepared by SDS Civil Enterprises dated October 2019 was submitted with the application. Trip generation for the proposed development was calculated as:</p>

3.4 Trip Generation

The *RTA Guide To Traffic Generating Developments* advises that tourist facilities are quite varied in their operation and ideally, comparison to similar local developments be had. A review Ballina Shire Council and Tweed Shire Council Section 94 trip generation tables, lists a rate of between 2.3 to 2.48 trips per day per bedroom, thereby adopting 2.3 trips per bedroom is a reasonable assessment. For the 8 cabins there are 8 bedrooms x 2.3 trips/day = 18 trips per day.

The information and education facility (cooking school) would service 12 participants and have a instructing chef. Adopting 50% of the onsite cabin attendees as being cooking school participants (ie 4 people), thereby 8 people (1 car per 2 people) may arrive via car including the instructing chef or similar. Summary of attendee trips would be:

4 people onsite	=	Nil additional trips
8 people at 1 car per 2 people	=	4 trips in and 4 trips out
1 instructing person	=	1 trip in and 1 trip out
Total peak trips	=	10 trips

Whilst the peak generation for the information and education facility (cooking school) would be 10 trips per day, allowing for an average operational participation demand of 60% (ie average use at 4 days per week or similarly 60% avg attendance), this equates to an operational demand of 6 trips per day for S94 contribution purposes.

Council's Development Engineer provided the following comments:

ii. *External vehicular access must:*

- a. *Not compromise the safety and efficiency of the road network;*
- b. *Be suitable for use by emergency service vehicles;*
- c. *Be suitable for traversing in all weather conditions.*

iii. *External road access is generally to be sealed for the following land uses:*

- *Tourist and visitor accommodation;*

Comment: The site is accessed from Fernleigh Road which is sealed. Access to the site is via an existing unsealed driveway off Fernleigh Road. The applicant proposes to seal the entranceway with a minimum width of 5.5m x 7m from the edge of the sealed roadway which will allow two-way passing of vehicles on that section of driveway external to the property. The sealed driveway will then taper to 3.5m wide so as to retain the two existing rock-packed entry pillars, which are 11.8m from the edge of the sealed roadway.

iv. *Internal vehicular access must:*

- *Be suitable for the access of emergency service vehicles;*
- *Be of all weather dust free construction and be suitable for traversing by standard 2 wheel drive vehicles;*
- *Be sealed in sections where grade exceeds 12%;*
- *Not exceed a grade of 25%; and*

v. *A suitable and safe connection must be provided between the existing road network and any proposed internal vehicular access infrastructure;*

Comment: The applicant proposed to seal the internal driveway to Ch.20, and provide a new 3m wide driveway from CH440 to CH700 which services the cabins, however Council's Environmental Health officer has recommended that the internal driveway be sealed to the creek (CH280) to mitigate potential impacts from dust, noise and erosion and sediment control. The application also proposes to include three pass bays and manoeuvring area suitable for a medium rigid vehicle to provide compliance with bush fire requirements. Should the application be approved, the consent would be conditioned accordingly.

vi. *A development application must address any potential environmental impacts caused by vehicular accesses (both internal and external) including erosion and sedimentation, dust, noise, traffic generation, amenity and visual impacts and vegetation removal with appropriate mitigation measures identified;*

Comment: The proposed development will generate additional traffic and noise and dust, particularly from the unsealed internal driveway. These issues have been identified as potential issues both by adjoining neighbours and Council's Environmental Health Officer.

A Noise Impact Assessment (NIA) was not submitted with the application but was requested following a site inspection. An NIA prepared by Tim Fitzroy & Associates dated 9 March 2020 was submitted.

Council's Environmental Health Officer has provided the following comments:

The use of the tourist facility may result in noise emissions which are well in excess of the current noise levels and characteristics at the site. In such instances, although certain noise emissions may be relatively noticeable, the emissions may well in fact be lawful in accordance with current legislation within a quiet rural setting,

Noise from overnight visitors, music, voices and traffic are likely factors which could adversely impact the amenity of the immediate area. The sound of vehicles accessing the site in early mornings and late into the evening when background noise levels are low, with both engine noise and noise from the unsealed road are factors which might create a nuisance to adjoining households.

The vehicle traffic has been considered within an acoustic study which was requested for this development. The findings of the noise study did not indicate that the road traffic would not impact unlawfully in regard to noise on the associated dwellings. However, as discussed above, in the environment of the development, traffic movements with noise and dust may well be considered annoying to nearby residents.

In association with noise, air quality impacts have not been addressed by the applicant to any great extent. The amount of vehicles which are expected to utilise the entrance way is discussed in the submitted Engineering Services Report. The report suggest that the 8 cabins will generate 18 trips per day and an average of 6 trips per day is expected to be generated by the cooking school.

In addition to the use of the cabins and cooking school traffic, the traffic generation of the existing dwelling should also be considered where it would be safe to assume 4 vehicle movements per day which in total equates to 28 vehicle movements per day. It should be noted that there has been no requirement or obligation placed on the proponents to maintain the access way to a reasonable standard. Given reasonable traffic movements, gravel roads can quickly deteriorate and expose underlying soils and corrugations greatly increasing noise

	<p><i>and dust emissions.</i></p> <p><i>In dry times, the amount of dust which may be generated by this amount of traffic is expected to be noticeable and may directly impact on the air quality and subsequent health of residents located adjoining the entrance roadway. Additionally, surface water is impacted during rain events as deposited dust and soil particles is washed from vegetation and shed to nearby waterways affecting water quality. This surrounding households and environment will benefit from the requirement to seal the surface of the roadway to a point past the creek located some 300 metres within from Fernleigh Road.</i></p> <p>Should the application be approved, the following condition will also be imposed on the consent:</p> <p>Noise Management Plan</p> <p>A Noise Management Plan prepared by a suitably qualified person shall be submitted to and approved by the Council prior to the issue of any Occupation Certificate. The Plan shall address, but not be limited to, the following matters:</p> <ul style="list-style-type: none"> • Limits to operating hours • Hours of delivery and servicing (including waste collection) • Specific physical and managerial measures for controlling noise • Measures to be implemented when dealing with noisy occupants • Establishment of a system to handle and respond to complaints. <p>vii. <i>Development must comply with the following on site vehicle parking requirements:</i></p> <ul style="list-style-type: none"> - <i>Adequate on site car parking must be available to accommodate all users of the site including residents, visitors or employees.</i> - <i>On site car parking for a proposed land use must comply with the applicable car parking requirements specified in any other chapter of this DCP.</i> <p>Council's Development Engineer has provided the following comments in relation to parking:</p> <p><i>Council's parking requirements are described in:</i></p> <ul style="list-style-type: none"> • <i>DCP Chapter 2, section 3.19 Car Parking and Access</i> • <i>DCP Chapter 7 - Rural Living and Activity</i> <p><i>The following requirements apply:</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2">Council Requirement</th> <th rowspan="2">Proposed Number</th> <th rowspan="2">Required Number of Parking Spaces</th> </tr> <tr> <th>Use</th> <th>Rate</th> </tr> </thead> <tbody> <tr> <td>Tourist Cabins</td> <td>1 spaces per cabin</td> <td>8 cabins</td> <td>8</td> </tr> <tr> <td>Cooking Classes</td> <td>1 space per 3 students</td> <td>12 students</td> <td>4</td> </tr> <tr> <td colspan="2"></td> <td>Total required</td> <td>12</td> </tr> </tbody> </table> <p><i>The development proposes to provide 13 car parking spaces inclusive of two disabled spaces. The development therefore complies with the requirements of</i></p>	Council Requirement		Proposed Number	Required Number of Parking Spaces	Use	Rate	Tourist Cabins	1 spaces per cabin	8 cabins	8	Cooking Classes	1 space per 3 students	12 students	4			Total required	12
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		Total required	12																

	<i>Council's DCP.</i>
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4.15 (1) (a) (iia) – any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

Planning Agreement (or draft)	Comments
	Not applicable.

	Comments/Is consistency with these provisions achieved?
If the DA is for the demolition of a building, consider the provisions of AS 2601-1991: The demolition of structures (as in force 1 July 1993):	Not applicable.
If the DA is only for a change of use or the use of an existing building as a place of public entertainment, is the fire protection and structural capacity of the building appropriate to the building's proposed use?	Not applicable.
If the DA involves the rebuilding/alteration/enlargement/extension of an existing building, is the existing building required to be brought into total or partial conformity with the Building Code of Australia (BCA)?	Not applicable.
If the DA is for the erection of a temporary structure, is the fire protection and structural capacity of the structure appropriate to the proposed use of the structure?, and is the ground or other surface, on which the structure is to be erected, sufficiently firm and level to sustain the structure while in use?	Not applicable.

4.15 (1) (b) – the likely impacts of that development

	Discuss whether or not the impact is acceptable or not? If not, then describe the adverse impacts and the steps taken to mitigate the impacts
Urban and Building Design	
i) Context and Settings	<p>The proposed development is to be undertaken on the property located at Lot 17 DP 1031242, No. 841 Fernleigh Road, Brooklet. The property is located approximately three kilometres south west of the village of Newrybar. Low intensity cattle grazing is currently practised on the property.</p> <p>The surrounding lands are generally characterised by</p>

	small lot primarily lifestyle subdivisions, macadamia plantations and horticultural uses. The Gaia Resort is located on the property directly to the north east. A large commercial nursery is located directly to the south west.
ii) Site Design and Internal Design	<p>The subject property has a total land area of 47.27 hectares.</p> <p>Existing on the subject property is a dwelling house, shed, tourist cabin, swimming pool and tennis court. The dwelling house, shed and tourist cabin are accessed from Fernleigh Road via a gravel driveway.</p> <p>The proposed development includes 4 x 1 bedroom cabins, 4 x 2 bedroom cabins, a recreation building which includes an office/reception, communal area for guests, laundry and toilet facilities and an Information and Education Facility which incorporates a cooking school and commercial kitchen.</p> <p>The proposed development is to be located to the west of the existing buildings and will benefit from a northerly aspect.</p>
iii) Ecologically Sustainable Building Design	No BASIX submitted. The tourist and visitor accommodation cabins are orientated to the north. Should the application be approved a Section J Energy Efficiency report will be required to be prepared by a suitable qualified energy assessor and submitted to the PCA prior to issue of a Construction Certificate.
iv) Access, Transport and Traffic	<p>The property is accessed from Fernleigh Road and will generate traffic. The proposed information and education facility will service guests on the property as well as the general public with a maximum 12 participants per class, and up to three classes per week. Cabins, at full capacity, could accommodate 24 people. Should the application be approved, the consent will be conditioned to seal the entranceway and part of the internal driveway to mitigate potential noise, dust and erosion and sediment control issues.</p> <p>Suitable disabled access is to be provided between the disabled cabin and the communal recreation/kitchen building and will include a disabled car parking space.</p>
v) Public Domain	The public domain will not be adversely impacted in the immediate locality as a result of this application.
vi) Utilities	Refer to BLEP and DCP sections of this assessment.
vii) Heritage	An AHIMS search identified that an Aboriginal site was within 50m of the subject land. However, a site inspection and subsequent letter from Jali LALC has identified no further issues.
viii) Construction	Construction of the development has the potential to produce impacts such as noise and dust.

	Should the application be approved, the consent will be conditioned to mitigate environmental impacts during construction including appropriate erosion and sediment controls and noise.
Environmental Impacts	
ix) Other Land Resources	<p>The subject land is mapped as Important Farmland under the North Coast Regional Plan, however there is only minimal agricultural pursuits currently undertaken on the land (35 head of cattle). Concerns were raised by submitters that this development utilises a substantial area of the property, and is further fragmenting valuable agricultural land. However, it is considered that the level of agricultural activity that is currently being undertaken on the property could continue if this application is approved.</p> <p>The subject land is mapped within the Wilsons River Catchment. The property contains a first order stream which drains to Skinners Creek. The application was referred to Rous County Council for comment and suggested conditions will be imposed on any Section 68 approval issued.</p>
x) Water	<p>The subject land is mapped within the Wilsons River Catchment. The property contains a first order stream which drains to Skinners Creek.</p> <p>The subject property is not connected to Council' reticulated water system or Rous County Council's system and is reliant on rain water tanks.</p> <p>The following is to be provided on-site for the proposed development:</p> <ul style="list-style-type: none"> - Two 25000L tanks dedicated for bush fire fighting purposes located to the west of cabin 7 and 8 - One 60000L tank dedicated for bush fire fighting purposes located beneath car park adjacent to the recreation building - Two 110000L below ground tanks for potable supply. <p>The application was referred to Rous County Council as the subject land is located within the Wilsons River catchment.</p>
xi) Soils	<p>The site is not affected by slip or acid sulfate soils.</p> <p>The consent will be conditioned to ensure sediment and erosion control mitigation measures are in place during construction. Sealing of the internal driveway</p>

		will also mitigate potential erosion and sediment control issues during heavy rainfall.
xii)	Air and Microclimate	Additional traffic has the potential to cause a dust issue to neighbouring residents. The consent will be conditioned to mitigate risk including sealing of the internal driveway to the creek (CH280).
xiii)	Flora and Fauna	<p>The proposed development does not require any removal of vegetation. The proponents have undertaken considerable regeneration of the subject property, including removal of lantana and non-native species. It is their intention to plant native food trees endemic to the Northern Rivers including Davidson Plum, Lilly Pilly, Quandong, Finger Limes, Lemon Aspen, Lemon Myrtle, Native Ginger, Pepper Berry, Wild Cherry and Brush Caperberry. It is the intention of the proponents to restore the riparian areas and fish habitat located on the property.</p> <p>There are no issues raised in relation to flora and fauna.</p>
xiv)	Waste	<p>A Site Waste Minimisation & Management Plan was submitted with the application which Council's Environmental Health Officer found to be satisfactory.</p> <p>Should the application be approved, the consent will be conditioned to ensure waste produced during construction and ongoing use of the facility is disposed of appropriately.</p>
xv)	Energy	Should the application be approved a Section J Energy Efficiency report will be required to be prepared by a suitable qualified energy assessor and submitted to the PCA prior to issue of a Construction Certificate.
Hazards		
xvi)	Noise and Vibration	Refer to the BLEP and DCP sections of this assessment and the report to Council regarding noise.
xvii)	Natural Hazards	The subject land is bush fire prone and was referred to NSW RFS and GTAs will be attached as Schedule 1 of the consent, should the application be approved.
xviii)	Technological Hazards	The subject land is bush fire prone and was referred to NSW RFS and GTAs will be attached as Schedule 1 of the consent, should the application be approved.
xix)	Safety, Security and Crime Prevention (CPTED)	No issues raised.
Social and Economic Impacts		
xx)	Social Impacts in the Locality	The proposed development was advertised and five objections were received and four letters of support were received.

	The proponents state that they are trying to achieve a “lodge” type experience and so it is assumed the development would be targeting the high end tourism market. This type of rural tourism is recognised as providing a positive social impact, as it provides alternative accommodation and activities (cooking school) throughout the local region, as well as promotion of local produce.
xxi) Economic Impact in the Locality	It is considered that the development will provide a positive economic impact, as it will provide the property owners with additional financial sources (via the tourist and visitor accommodation and the cooking school), provision of jobs during construction of the development and provision of jobs post construction. Further flow on effects are also a possibility as guests utilise other local businesses, such as restaurants etc.
Cumulative Impacts	
xxii) Cumulative Impacts	Should the development be approved, there is the potential for further erosion of the RU1 zone and loss of valuable agricultural lands. However, the proposed development is permissible in the zone and with appropriate mitigation measures, and appropriate management of the development, it is considered unlikely that there will be negative cumulative impacts as a result of this development.

4.15 (1) (c) – The suitability of the site for the development

		Comments
i)	Does the proposal fit in the locality?	<p>Tourist and visitor accommodation and Education and Information facilities are permissible in the RU1 zone. The Recreation Area is associated with the tourist and visitor accommodation.</p> <p>Any issues identified, including noise and dust, have been addressed in previous sections of this assessment.</p> <p>The proposal, with appropriate management, is considered to fit in the locality.</p> <p>There are no real constraints posed by adjacent development that would prohibit the subject development from occurring.</p> <p>The utilities and services available to the site are considered adequate for the proposed development</p>
ii)	Are the site attributes conducive to development?	<p>It is considered that the site attributes are conducive to the proposed development as the tourist and visitor accommodation cabins are appropriately located, clustered as required and there will be an on-site manager required.</p> <p>The site is subject to bush fires and the RFS GTAs will be attached to the consent should the application be approved.</p>

4.15 (1) (d) Any submission made in accordance with this Act or the Regulations?

Is advertising required because the development is designated or "advertised" development?	No
Is advertising required in accordance with established Council policy and practice?	Yes – 20 adjoining owners/occupiers were notified.
If YES, how many submissions were received?	<p>Five objections received. Five letters of support received.</p> <p>Refer to body of Council report for detailed assessment is issues raised.</p>

Document general terms of issues raised in any submission and how they are being considered/ assessed:

Public Authority Submissions:	NSW Rural Fire Service Rous County Council
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4.15 (1) (e) *The public interest*

Federal, State & Local Government interests and Community interests	The proposed development is considered to be in the interest of Federal, State & Local Government and the Community.
Section 64 Contributions and Section 7.4 Contributions	Contributions are applicable to the development and suitable conditions will be imposed should the application be approved.

DRAFT CONDITIONS OF CONSENT – DA 2019/694**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
Ron Johnson	DA 01	Locality Plan	July 2020
Ron Johnson	DA 02	Site Plan	July 2020
Ron Johnson	DA 09	Floor Plan	April 2019
Ron Johnson	DA 10	Elevations	April 2019
Ron Johnson	DA 11	Elevations	April 2019
Ron Johnson	DA 12	Sections	April 2019
Ron Johnson	DA 06	Floor Plan Cabin Type 2	April 2019
Ron Johnson	DA 07	Elevations	April 2019
Ron Johnson	DA 08	Elevations	April 2019

except as modified by any condition in this consent.

2. **Commencement of occupation or use**
Occupation or use of the (premises/site) for the purposes authorised by this consent shall not commence until all 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.
3. The development is to be carried out in accordance with the NSW Rural Fire Service General Terms of Approval requirements as outline in Schedule 2 (**attached**).
4. As detailed in the statement of environmental effects submitted by Planners North, dated October 2019, the Communal Recreation Building is for the use of the guests of the tourist and visitor accommodation cabins and/or cooking school. The Communal Recreation Building is not to be used for weddings/parties, functions, events or the like.
5. As detailed in the statement of environmental effects submitted by Planners North, dated October 2019, the Information and Education Facility/Cooking School is for the use of the patrons of the cooking school. The Information and Education Facility/Cooking School is not to be used for the purpose of a food and drink premises, restaurant, café or the like.
6. The use of the cabins for the purpose of Tourist and Visitor Accommodation is to consist of short term stays only, being defined as "individual guests must not be accommodated for more than 42 consecutive days with an interval of at least 14 days between occupancies, or for more than a total of 90 days in any 12 month period." No permanent occupancy of any tourist and visitor accommodation cabin is permitted via this consent.
7. The existing dwelling house is to be occupied at all times as the manager's residence for the tourist and visitor accommodation and at no time is to be utilised for tourist and visitor accommodation.
8. An on-site manager is to be present and residing within the manager's residence at all times whilst ever the cabins are occupied.
9. No enclosure of decks, porches or terraces by shutters or the like is to occur for the tourist and visitor accommodation cabins.

10. Operational Management Plan

Any future owners of the subject property must submit to Council an Operational Management Plan (OMP) / Terms and Conditions for the Tourist and Visitor Accommodation, Communal Recreation Building and Information and Education Facility/Cooking School. This plan must be prepared in accordance with the requirements of relevant consent conditions including those referring to the Noise Management Plan and Operational Management Plan. The OMP is to be submitted to Council by each and every subsequent owner of the property, prior to their first use as Tourist and Visitor Accommodation or the Information and Education Facility/Cooking School.

11. Vegetated buffer

Prior to commencement of the proposed use, the approved vegetated buffer is to be completed to the satisfaction of Council, as shown in the Land Use Conflict Risk Assessment prepared by Tim Fitzroy and Associates, Appendix C, dated 17 October 2019. The vegetated buffer shall be installed and maintained in perpetuity to reduce the potential for airborne conflict such as chemical spray drift and dust and should be established to ensure compliance with Conditions 2 and 3 of the NSW Rural Fire Service General Terms of Approval as per Schedule 2 (**attached**).

12. No Signs Without Approval

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.

13. BCA compliance

The buildings are to comply with the requirements of the Building Code of Australia and relevant Australian Standards.

14. Accessible car parking spaces

Accessible car parking spaces are to be installed in accordance with AS/NZS 2890.6-2009 and incorporate a continuous accessible path of travel from the accessible car park to the principle entrance of the building. The accessible path of travel is to be installed in accordance with AS 1428.1-2009.

15. Access to buildings

Access to and within the Communal Recreational building, kitchen area and the accessible cabin is to be provided in accordance with the Disability (Access to Premises – Buildings) Standards 2010 and AS 1428.1-2009.

16. Construction certificate to be consistent with DA

Any Construction Certificate issued in association with this development must ensure that any certified plans are consistent (in terms of site layout, site levels, building location, size, internal/external design, external configuration and appearance) with the approved Development Application plans.

17. Driveway construction

The parking bays within the development are to be constructed of reinforced concrete or similar paved material.

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.

18. Long Service Levy

In accordance with Section 109F of the EP & A Act (Section 109 F) a Construction Certificate will not 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.

19. Issue of Construction Certificate

The erection of a building 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 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.

20. Fire Safety Schedule

Prior to the issuing of a Construction Certificate, either the Council or an appropriately accredited certifier shall issue a Fire Safety Schedule for the proposed development in its entirety. In accordance with Clause 168(1), *Environmental Planning and Assessment Regulation 2000* a Fire Safety Schedule must specify the fire safety measures that should be implemented in each building premises the subject of the development consent.

It is an offence to fail to provide a Fire Safety Schedule in accordance with the requirements of the *Environmental Planning and Assessment Regulation 2000*.

21. Section J Energy Efficiency

Energy efficiency provisions contained in Section J of the Building Code of Australia apply to the development. A Section J Energy Efficiency report, prepared by a suitably qualified energy assessor, is submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

22. Section 68 application – Plumbing and drainage

Prior to the issue of the Construction Certificate, an application under Section 68 of the Local Government Act is to be lodged with Council for the carrying out of all plumbing and drainage work associated with the buildings (Communal Recreation Building, Information and Education Facility/Cooking School or Tourist and Visitor Accommodation cabins). Payment is also to be made of the application fee and inspection fees for the proposed works.

Prior to issue of the Construction Certificate an Approval to Install all plumbing and drainage work must be obtained from Council.

23. Section 68 application – On site sewage management system

Prior to issue of a Construction Certificate, an application under Section 68 of the Local Government Act is to be lodged with Council for the installation of an On Site Sewage Management System. The application is to refer to the Tim Fitzroy and Associates report dated 4 June 2020 and amended plans. Details are to include the size of any proposed tank facilities, Aerated Wastewater Treatment Systems and ETA bed areas (m²) and location. Payment is also to be made of the appropriate application and inspection fees.

Prior to issue of the Construction Certificate an Approval to Install an On Site Sewage Management System must be obtained from Council.

24. Construction Management Plan

Prior to issue of a Construction Certificate, a Construction Management Plan shall be submitted to and approved by Council. The plan shall address but not be limited to the following matters where applicable:

- Hours of operation
- Contact details of the site manager
- Traffic management
- Noise, dust and vibration management
- Waste management
- Erosion and sediment control.

25. Civil works

Prior to the issue of the Construction Certificate, engineering design drawings shall be submitted to and approved by Council for the following civil works under Section 138 of the Roads Act 1993.

- **Property access driveway (no kerb & gutter)** – A 4.0m wide sealed access driveway must be designed and constructed in accordance with Standard Drawings R14 and R15 of the Northern Rivers Local Government Development Design and Construction Manuals. The sealed driveway must extend from the edge of the existing sealed pavement in Fernleigh Road through to the sites front property boundary.

26. Section 138 Driveway Fee

Prior to the issue of a Construction Certificate, a Section 138 application is to be made and fee paid for driveway works required in the road reserve. The fee is subject to review and may vary from the time of consent till time of payment (see Council's Schedule of Fees and Charges for the current rates).

27. Internal access driveway

The internal access driveway from Fernleigh Road property boundary through to the creek (CH280), which is located approximately 250 metres into the property, is to be constructed of all weather, sealed construction as a minimum 4.0m wide. The driveway is to be maintained and graded to ensure that stormwater and or dust is not directed or impacts onto adjoining properties.

The remainder of the internal access driveway (i.e. from the creek at CH280 through to the car parking spaces proposed for the tourist cabin facilities and cooking classes) must be constructed as a minimum 4.0m wide gravel pavement formation. The design and construction of the driveway must be in accordance with the "Planning for Bushfire Protection" and Standard Drawings R14 and R15 of the Northern Rivers Local Government Development Design and Construction Manuals. Any curves within the road access shall have a minimum inner radius of 6 metres and must be minimal in number to allow rapid access and egress by fire fighting vehicles. The pavement must be designed to carry a vehicle load of 15 tonnes. Design plans are to be certified by a suitably qualified professional and approved by Council prior to issue of the Construction Certificate.

28. Car parking & vehicular access

The development shall provide a minimum of 12 sealed parking spaces (inclusive of two disabled car parking spaces). The design of all car parking and vehicular accesses are to be in accordance with the Australian Standard AS/NZS 2890.1:2004. Design plans are to be certified by a suitably qualified professional and approved by the Principal Certifying Authority prior to issue of the Construction Certificate.

29. Car parking for disabled

The design of the two on-site disabled car parking spaces shall be in accordance with Australian Standard AS/NZS 2890.6: 2009. Design plans are to be certified by a suitably qualified professional and approved by the Principal Certifying Authority prior to issue of the Construction Certificate.

30. Flooding and Stormwater

Stormwater controls shall be provided on site in accordance with the Water Sensitive Design requirements of Council's Combined Development Control Plan Chapter 2 – Section 3.9 – Stormwater Management. A Stormwater Management Plan and detailed design, prepared by a suitably qualified hydraulics consultant and/or engineer, must be submitted to and approved by the Principal Certifying Authority prior to the issue of the Construction Certificate.

31. Food preparation and storage areas

Plans (including sections and elevations) and specifications showing details of all food preparation and storage areas, layout, construction and method of installation of all fittings and fixtures, together with floor, wall and ceiling finishes, are to be submitted to Council and approval obtained prior to the issue of the Construction Certificate. The applicant shall construct and fit-out the premises in accordance with the provisions of the Australian Food Safety Standards 3.1.1, 3.2.2 and 3.2.3.

32. Developer Contributions

Prior to issue of a Construction Certificate where building work is proposed, payment to Council of non-refundable monetary contributions shall be made towards the provision of public services, infrastructure and amenities, which are required as a result of the development in accordance with the following contribution plans prepared under Section 7.11 of the Environmental Planning & Assessment Act, 1979.

Contribution Plan/Development Servicing Plan	Adopted
Cumalum Urban Release Area Precinct A Contributions Plan 2015	26 February 2015
Ballina Shire Roads Contribution Plan Version 4.1	26 July 2018
Ballina Shire Open Spaces and Community Facilities Contributions Plan 2016	1 January 2017
Ballina Shire Carparking Contributions Plan 2014	14 May 2014
Ballina Shire Heavy Haulage Contribution Plan	24 October 2019

The Contribution Plans provide for the indexing of contribution amounts and are also subject to amendment. The contribution rates payable will be the rates that are applicable at the time payment is made. Copies of the Contribution Plans may be viewed at Council's Customer Service Centre, Cherry Street, Ballina or on Council's website www.ballina.nsw.gov.au

The Contribution amounts applicable at the time this consent is issued are as per Schedule 1 (attached).

33. Developer Charges

Prior to issue of a Construction Certificate where building work is proposed, payment to Council of non-refundable monetary charges shall be made towards the provision of bulk water supply, water reticulation and sewer infrastructure which are required as a result of the development in accordance with the charges set by Ballina Shire Council and Rous Water as water supply authorities under the Water Management Act 2000. The amount payable will be the assessed additional equivalent tenements generated by the development multiplied by the charge applicable at the time of payment.

Certificates of Compliance pursuant to Section 306 of the Water Management Act 2000 shall be deemed to have been issued where the required charges have been paid and all construction works required by the water supply authority for the development have been completed.

The charges are currently guided by the following development servicing plans:

Water Supply Authority	Contribution Plan/Development Servicing Plan	Adopted
Ballina Shire Council	Ballina Shire Council Water Supply Infrastructure Development Servicing Plans	27 February 2015
Ballina Shire Council	Ballina Shire Council Sewerage Infrastructure Development Servicing Plans	27 February 2015
Rous Water	Development Servicing Plan for Bulk Water Supply	15 June 2016

The Development Servicing Plans provide for the indexing of charges and are also subject to amendment and replacement. The charges payable are the charges set by the water supply authorities at the time payment is made. Copies of the Development Servicing Plans may be viewed at Council's Customer Service Centre, Cherry Street, Ballina or on Council's website www.ballina.nsw.gov.au

It should be noted that Ballina Shire Council acts as Rous Water's agent in the collection of Rous Water Bulk Water Supply Charge for developments that are connected to the Ballina Shire water supply.

The charges applicable at the time this consent is issued are included in Schedule 1 (attached).

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.

34. Notice of Commencement and Appointment of Principal Certifying Authority

Where Council is not nominated as the Principal Certifying Authority (PCA), the person having the benefit of this development consent is to submit to Council the following information:

- Written notification of the name and details of the Principal Certifying Authority (PCA); and
- The date of commencement and details of the Development Consent and associated Construction Certificate.

The above information is to be submitted at least two days prior to the commencement of any works, in accordance with the requirements of Section 6.6 of the Environmental Planning & Assessment Act 1979 (as amended).

35. Erection of Signs

- (1) A sign must be erected in a prominent position on any site on 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 is prohibited.
- (2) Any such 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.
- (3) This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- (4) This clause does not apply in relation to Crown building work that is certified, in accordance with Section 6.28 of the Act, to comply with the technical provision of the NSW Government's building laws.

36. Notice of commencement of civil works

Prior to the commencement of construction, the contractor must submit a completed copy of the "Notice of Commencement of Civil Development Work" form and a copy of their \$20M Public Liability Insurance Policy to Council. Copies of the form are available from Council's website.

37. 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 and Certificate Number. Details are to be submitted to Council prior to the commencement of construction.

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.

38. Revegetation of disturbed areas

All disturbed and exposed areas are to be revegetated. Revegetation of such areas shall be implemented as soon as construction works end in each area of the development.

39. Ceiling finish

The ceiling of the Information and Education Facility/Cooking School shall be of a rigid smooth faced impervious material (such as 'wet area board' fixed and set) continuous with a flat surface and painted with a washable paint of light colour.

40. 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.

41. 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.

42. Building waste

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.

43. 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.

44. Site contamination

Any new information that becomes known 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.

45. Waste

All demolition, construction or the like waste is to be transported and disposed of to an approved waste facility unless managed in accordance with a current resource recovery order and exemption. If alternative disposal methods are to be sought, written approval is to be granted by the Principal Certifying Authority (PCA).

46. Erosion and Sediment Control Plan

An Erosion and Sediment Control Plan (ESCP) which has been prepared in accordance with the requirements of Managing Urban Stormwater – Soils and Construction, LANDCOM, March 2004 and approved by the Principal Certifying Authority (PCA) must be implemented in full during the construction period.

47. Erosion and Sediment Control Measures

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.

48. Discharge of sediment and waste materials

The discharge of sediment and waste materials including concrete waste, paint, plaster and the like material into any roadway, natural or constructed drainage system, watercourse and/or adjoining land constitutes a breach of development approval conditions. Council's Authorised Officers may issue a Clean Up Notice, Prevention Notices and/or an on-the-spot fine in accordance with the Protection of the Environment Operations Act 1997.

49. Fill material

The applicant shall ensure that any fill material imported to the site for the proposed development is obtained from fill sources that have an approved testing regime. The supplier of the fill material must certify to the Principal Certifying Authority (PCA) at the completion of the construction of the development that the material was free of contaminants, being natural or otherwise.

50. Civil Works

All civil construction works shall be completed in accordance with the minimum requirements of the Northern Rivers Local Government Development Construction Manuals (as current at the time of construction works commencing).

51. Traffic Control

All traffic control during construction shall be in accordance with the Roads and Maritime Services - Traffic Control at Work Sites Manual and the certified traffic control plan. At least one person at the site must be qualified to "Apply Traffic Control Plans" (Yellow Card).

52. Inspection (driveway crossing)

Council's Engineer must inspect and approve works associated with the construction of the driveway crossing within the road reserve for the development. Council's Engineer must be contacted on telephone 1300 864 444 at the time of the works.

53. Damage to Council infrastructure

Damage to any grass verge, utility services or road within the road reserve as a result of construction works related to the development shall be immediately reinstated to a satisfactory and safe condition. Council's Engineer must be contacted on telephone 1300 864 444 at the time any damage occurs to ensure appropriate reinstatement works are undertaken.

54. Equipment storage

There shall be no storage of building materials, plant or equipment on the road, footway or reserve areas without prior written consent of Council.

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.

55. Occupation certificate

An Occupation Certificate is to be obtained prior to commencement of use or occupation of the premises. Where Council is not the Principal Certifying Authority the applicant shall ensure that a Certificate of Occupation prepared by the Principal Certifying Authority is submitted to Council prior to use or occupation of any of the buildings.

56. On-site Sewerage Management System

An Approval to Operate an Onsite Sewerage Management System (OSSM) must be obtained from Council prior to issue of Occupation Certificate.

57. Fire Safety Certificate

- a) Prior to the issuing of an Occupation Certificate the landowner shall provide Council with a Final Fire Safety Certificate for the proposed development and shall certify that all essential fire safety measures installed in the building have been inspected and tested by a competent fire safety practitioner and were found to have been designed and installed to be capable of operating to the minimum standard required by the Building Code of Australia.
- b) The Final Fire Safety Certificate to which this consent applies must be in the approved form and be provided in accordance with Clause 171, Environmental Planning and Assessment Regulation 2000.
- c) It is an offence to fail to provide a Fire Safety Certificate in accordance with the requirements of the Environmental Planning and Assessment Regulation 2000.

58. Pest control program

Written evidence shall be provided to Council's Environmental Health Officer that a pest control program has been implemented throughout the premises prior to the introduction of foods into the premises.

59. Inspection

Trading must not commence until the premises has been inspected and approved by Council's Environmental Health Officer and an application has been made to Council to register the business on Council's "Commercial Premises Register" and the appropriate fee paid.

60. Water supply

Prior to commencement of operations the water supply is to be sampled and analysed by a NATA certified laboratory for chemical, physical and microbiological parameters in order to verify suitability of supply. The water sampling results are to be submitted to Council within 14 days of receipt of results. Further assistance can be sought by referring to the NSW Health Department's "Private Water Supply Guidelines" – copies are available from Council's Environmental Health Section.

61. Potable water

All Private Water Supplies must be managed in accordance with NSW Health's Private Water Supply Guidelines (2014). The potable water shall generally meet the Australian Drinking Water Guideline's requirements. A water quality assurance program (QAP) shall be developed and submitted to NSW Health. A copy of the QAP and NSW Health cover letter shall be submitted to and approved by Council prior to the release of any Occupation Certificate.

62. Inspection of commercial premises fit-out

A final inspection of the commercial premises fit-out by Council's Environmental Health Officer is to be conducted and the appropriate professional services fee is to be paid prior to the issuing of any Occupation Certificate.

63. Vegetated buffer

The vegetated buffer, as shown within the Land Use Conflict Risk Assessment – Tim Fitzroy and Associates, Appendix C, dated 17 October 2019 must be installed and maintained in perpetuity. The vegetated buffer must:

- contain random plantings of a variety of tree and shrub species of differing growth habits, at spacing's of 1–2 m
- have a minimum width of 10 metres
- include species with long, thin and rough foliage which facilitates the more efficient capture of spray droplets;
- provide a permeable barrier which allows air to pass through the buffer
- provide foliage from the base to the crown
- include species which are fast growing and hardy;
- have a mature tree height at least 4 metres
- include an area of at least 5m clear of the southern boundary
- be maintained in perpetuity
- Obtain an optical porosity of 0.3.

64. Screens

In accordance with Ballina Development Control Plan 2012 Chapter 2 Section 3.6 'Mosquito Management', all windows, external doors and other openings must be provided with effective insect screening and any rainwater tanks shall be fitted with screening of a durable material to prevent mosquito breeding and insect entry. Tanks should be fitted with a 'first flush diversion' device installed by a licenced plumber. The screening and structures shall be maintained to continue to prevent entry of mosquitoes.

65. Noise Management Plan

A Noise Management Plan (NMP) prepared by a suitably qualified person shall be submitted to and approved by the Private Certifying Authority prior to the issue of any Occupation Certificate. The Plan shall address, but not be limited to, the following matters:

- Limits to operating hours
- Hours of delivery and servicing (including waste collection)
- Specific physical and managerial measures for controlling noise
- Measures to be implemented when dealing with noisy occupants
- Measure for dealing with exceedances
- Arrangement to inform residents of noisy activities likely to affect their amenity, including the provision of a 24 hour contact point for residents
- Establishment of a system to handle and respond to complaints.

A copy of the approved Noise management Plan is to be submitted to Council prior to the issue of the Occupation Certificate.

66. Operational Management Plan

An Operational Management Plan (OMP) or Terms and Conditions for the letting of the Tourist and Visitor Accommodation is required to be prepared, submitted to and approved by the Private Certifying Authority prior to the issue of the Occupation Certificate. The OMP/Terms and Conditions must address, as a minimum, the following matters:

- a) Details (name, phone contact etc.) of the on-site manager, with these details to be provided to both the visitors/guests and also to neighbouring properties.
- b) The on-site manager is to provide all guests with an on-site induction, including a tour of the Tourist and Visitor Accommodation, Communal Recreation Building and property grounds.
- c) Waste management arrangements for the proposed development, including Tourist and Visitor Accommodation, Communal Recreation Building and Cooking School.

A copy of the approved Operational Management Plan is to be submitted to Council prior to the issue of the Occupation Certificate.

67. External lighting

All external lighting to be installed and operated on site shall comply with the AS 4282:2019 "Control of the Obtrusive Effects of Outdoor Lighting". Upon installation of lighting and before final commissioning, a report from a qualified consultant shall be submitted to the Principal Certifying Authority (PCA) demonstrating compliance with AS 4282:2019 "Control of the Obtrusive Effects of Outdoor Lighting".

68. Civil works

All civil works approved under Section 138 of the Roads 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 the approved design.

69. Driveway (internal)

The internal driveways within the property are to be constructed in accordance with the approved design. All works are to be completed and approved by the Principal Certifying Authority prior to issue of the Occupation Certificate.

70. Car parking

The construction of all car parking and vehicular accesses is to be in accordance with the approved Construction Plans and 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.

71. Car parking (disabled)

The construction of all disabled car parking spaces is to be in accordance with the approved Construction Plans and Australian Standard AS /NZS 2890.6: 2009. All works are to be certified by a suitably qualified consultant prior to issue of the Occupation Certificate.

72. 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. 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.

73. Certification by Bush Fire Consultant

Prior to the issue of the Occupation Certificate, 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 24 February 2020 (refer to Schedule 2 – **attached**) have been addressed and complied with.

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.

74. Annual Fire Safety Statement

- a) The owner of the building must provide Council with an Annual Fire Safety Statement at least once in each twelve months specified in the current Fire Safety Schedule and Fire Safety Certificate certifying that the essential and statutory fire safety measures in the building have been inspected and tested by a competent person and were found to have been designed, installed and capable of operating to the minimum standard required by the current Fire Safety Schedule.
- b) The Annual Fire Safety Statement must be in the approved form in accordance with Clause 175, Environmental Planning and Assessment Regulation 2000.
- c) A copy of the Annual Fire Safety Statement together with a copy of the current Fire Safety Schedule are to be forwarded to the Commissioner, NSW Fire Brigades, and a copy of the Fire Statement and Schedule, prominently displayed in the building.
- d) It is an offence to fail to provide an Annual Fire Safety Statement and to fail to prominently display the current Annual Fire Safety Statement and current Fire Safety Schedule within the building in accordance with the requirements of the Environmental Planning and Assessment Regulation 2000.

75. General Amenity

The building, constructed works and activities carried out on the site shall not cause injury to, or prejudicially affect the amenity of the locality by reason of the appearance of the buildings, works, materials or goods on the site, traffic movements, on-street parking, the emission of smell, noise, vibration, dust, waste products, oil, lights and the like.

76. Operational Noise

The use and occupation of the proposed development, including all plant and equipment installed thereon, and the undertaking of normal operational activities must not give rise to any offensive noise within the meaning of the Protection of the Environment Operations Act, 1997. Offensive Noise means noise:

1. That, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances;
 - a. Is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted;
 - b. Interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted; or
2. That is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulations.

77. The use of the Tourist and Visitor Accommodation, Communal Recreation Building and Cooking School shall be in accordance with the Noise Management Plan and Operational Management Plan which have been approved by the Private Certifying Authority. A copy of the approved management plans shall be made available at the premises and details provided to staff and users of the facility.

78. The development shall not cause a noise nuisance to any other person. Following occupation, should complaints of a noise nuisance be substantiated by Council, an acoustic assessment shall be conducted by a qualified consultant and report provided to Council. The applicant shall then implement all recommendations provided under the assessment within a timeframe set by Council, to the satisfaction of Council and comply with any additional direction given by Council.

79. Waste

All waste generated on site is to be disposed to and stored in the nominated waste area/s. Bins shall remain in the bin enclosure at all times, except during waste collection.

PRESCRIBED CONDITIONS

Division 8A of the Environmental Planning and Assessment Regulation Prescribes the following conditions of development consent:

S98 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

(cf clauses 78 and 78A of EP & A Regulation 1994)

- (1) For the purposes of section 4.17(11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building works:
 - a) That the work must be carried out in accordance with the requirements of the Building Code of Australia
 - b) In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

- (1A) For the purpose of section 4.17(11) of the Act, it is prescribed as a condition of a development consent for a temporary structure that is used as an entertainment venue, that the temporary structure must comply with Part B1 and NSW Part H102 of Volume One of the Building Code of Australia.
- (2) This clause does not apply:
 - (a) To the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4), or
 - (b) To the erection of a temporary building, other than a temporary structure to which subclause (1A) applies.
- (3) In this clause, a reference to the building Code of Australia is a reference to that Code as in force on the date the application is made for the relevant:
 - a) Development consent, in the case of a temporary structure that is an entertainment venue, or
 - b) Construction certificate, in every case.

NOTE. There are no relevant provisions in the *Building Code of Australia* in respect of temporary structures that are not entertainment venues.

B98A Erection of signs

- (1) For the purposes of section 4.17(11) of the Act, the requirements of subclause (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- (2) A sign must be erected in a prominent position on any site on 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.
- (3) Any such 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.
- (4) This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building
- (5) This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the Act, to comply with the technical provisions of the State's building laws.
- (6) This clause applies to a development consent granted before 1 July 2004 only if the building work, subdivision work or demolition work involved had not been commenced by that date.

Note: Principal certifying authorities and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause 227A which currently imposes a maximum penalty of \$1,100).

S98B Notification of Home Building Act 1998 requirements

- (1) For the purposes of section 4.17(11) of the Act, the requirements of this clause are prescribed as conditions of a development for development that involves any residential building work within the meaning of the Home Building Act 1989.
- (2) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - a) the case of work for which a principal contractor is required to be appointed:
 - (i) the name and licence number of the principal contractor, and
 - (ii) the name of the insurer by which the work is insured under part 6 of that Act,
 - b) in the case of work to be done by an owner-builder"
 - (i) the name of the owner builder, and
 - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- (3) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written of the updated information.
- (4) This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the Act, to comply with the technical provisions of the State's building laws.

S98E Condition relating to shoring and adequacy of adjoining property.

For the purpose of section 4.17(11) of the Act, it is prescribed condition of development consent that 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.
- (1) The condition referred to in subclause (1) 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.

*Please be advised if this consent is for an **entertainment venue**, then there are further prescribed conditions that apply under clauses 98C and 98D of the Environmental Planning and Assessment Regulation.*

SCHEDULE 1

Contribution	Receipt Code	Contribution Unit	Rate per contribution Unit	Total Contribution Units Payable	TOTAL COST
Ballina District Parks 2016	4302	equivalent residential allotment	\$1,146.00	1.4667	\$1,680.78
Ballina Playing Fields 2016	4303	equivalent residential allotment	\$2,582.00	1.4667	\$3,786.90
Regional Level Communal Recreational Facilities (SHIRE) 2016	4304	equivalent residential allotment	\$1,875.00	1.4667	\$2,749.97
Ballina District Community Centres & Meeting Halls 2016	4305	equivalent residential allotment	\$1,117.00	1.4667	\$1,638.25
Regional Level Community Facilities (SHIRE) 2016	4306	equivalent residential allotment	\$1,100.00	1.4667	\$1,613.32
OS & CF Plan Administration (SHIRE) 2016	4307	equivalent residential allotment	\$111.00	1.4667	\$162.80
Roads Contribution Plan V4.1 (2018)	5206	equivalent residential allotment	\$12,498.00	3.0388	\$37,978.42
Roads Administration V4.1 (2018)	5207	equivalent residential allotment	\$187.00	3.0388	\$568.25
TOTAL					\$50,178.68

SCHEDULE 2



NSW RURAL FIRE SERVICE

Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Your reference: (CNR-2705) DA 2019/694
Our reference: DA20191123001207-Original-1

ATTENTION: Nadelene Smith

Date: Monday 24 February 2020

Dear Sir/Madam,

Integrated Development Application
s100B – SFPP – Other Tourist Accommodation
841 Fernleigh Rd Brooklet NSW 2479 AUS, (none)

I refer to your correspondence dated 19/11/2019 seeking general terms of approval for the above Integrated Development Application.

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

General Conditions

- The development proposal is to comply with the following drawings, prepared by Ron Johnson;
 - Plan titled "Locality Plan" DA01 and dated May 2019, and
 - Plan titled "Site Plan" DA02 and dated May 20.

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:

- At the commencement of construction of cabins 1--4, and then in perpetuity, the site around the proposed cabins shall be maintained as an inner protection area (IPA) as follows:
 - North for a distance of 18 metres;
 - West and east for a distance of 14 metres; and
 - South for a distance of 37 metres.

The IPA must comprise:

- Minimal fine fuel at ground level;
- Grass mowed or grazed;

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Postal address

NSW Rural Fire Service
Locked Bag 17
GRANVILLE NSW 2142

Street address

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

T (02) 8741 8555
F (02) 8741 8550
www.rfs.nsw.gov.au

- Trees and shrubs retained as clumps or islands and do not take up more than 20% of the area;
- Trees and shrubs located far enough from buildings so that they will not ignite the building;
- Garden beds with flammable shrubs not located under trees or within 10 metres of any windows or doors;
- Minimal plant species that keep dead material or drop large quantities of ground fuel;
- Tree canopy cover not more than 15%;
- Tree canopies not located within 2 metres of the building;
- Trees separated by 2-5 metres and do not provide a continuous canopy from the hazard to the building; and,
- Lower limbs of trees removed up to a height of 2 metres above the ground.

3. At the commencement of construction of cabins 5 - 8, and then in perpetuity, the site around the proposed cabins shall be maintained as an inner protection area (IPA) as follows:

- North for a distance of 18 metres;
- West and east for a distance of 14 metres; and
- South for a distance of 30 metres.

The IPA must comprise:

- Minimal fine fuel at ground level;
- Grass mowed or grazed;
- Trees and shrubs retained as clumps or islands and do not take up more than 20% of the area;
- Trees and shrubs located far enough from buildings so that they will not ignite the building;
- Garden beds with flammable shrubs not located under trees or within 10 metres of any windows or doors;
- Minimal plant species that keep dead material or drop large quantities of ground fuel;
- Tree canopy cover not more than 15%;
- Tree canopies not located within 2 metres of the building;
- Trees separated by 2-5 metres and do not provide a continuous canopy from the hazard to the building; and,
- Lower limbs of trees removed up to a height of 2 metres above the ground.

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:

4. At the commencement of construction of the recreational building (including the cooking school), and then in perpetuity, the property around the building shall be managed as follows:

- North, east and west, for a distance of 30m metres, as an inner protection area; and
- South, for a distance of 75 metres, as an asset protection zone.

The IPA must comprise:

- Minimal fine fuel at ground level;
- Grass mowed or grazed;
- Trees and shrubs retained as clumps or islands and do not take up more than 20% of the area;
- Trees and shrubs located far enough from buildings so that they will not ignite the building;
- Garden beds with flammable shrubs not located under trees or within 10 metres of any windows or doors;
- Minimal plant species that keep dead material or drop large quantities of ground fuel;
- Tree canopy cover not more than 15%;
- Tree canopies not located within 2 metres of the building;
- Trees separated by 2-5 metres and do not provide a continuous canopy from the hazard to the building; and,
- Lower limbs of trees removed up to a height of 2 metres above the ground.

Construction Standards

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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:

5. The proposed cabins 1 - 4 shall be constructed to comply with either of the following approved construction outcome choices;

- Sections 3 (Construction General) and 6 (Construction for Bushfire Attack Level 19 i.e. BAL-19) of Australian Standard AS3959-2009 'Construction of buildings in bushfire-prone areas', or
- The BAL-19 construction requirements of the 'NASH Standard - Steel Framed Construction in Bushfire Areas - 2014' (1.7.14 updated).

Compliance with section A3.7 of the Addendum Appendix 3 to 'Planning for Bush Fire Protection 2006' is also required to be achieved in concert with the above

6. The proposed cabins 5 - 8 shall be constructed to comply with either of the following approved construction outcome choices;

- Sections 3 (Construction General) and 7 (Construction for Bushfire Attack Level 29 i.e. BAL-29) of Australian Standard AS3959-2009 'Construction of buildings in bushfire-prone areas', or
- The BAL-29 construction requirements of the 'NASH Standard - Steel Framed Construction in Bushfire Areas - 2014' (1.7.14 updated).

Compliance with section A3.7 of the Addendum Appendix 3 to 'Planning for Bush Fire Protection 2006' is also required to be achieved in concert with the above.

7. The proposed recreation building (incorporating the cooking school) shall be constructed to comply with either of the following approved construction outcome choices;

- Sections 3 (Construction General) and 5 (Construction for Bushfire Attack Level 12.5 i.e. BAL-12.5) of Australian Standard AS3959-2009 'Construction of buildings in bushfire-prone areas', or
- The BAL-12.5 construction requirements of the 'NASH Standard - Steel Framed Construction in Bushfire Areas - 2014' (1.7.14 updated).

Compliance with section A3.7 of the Addendum Appendix 3 to 'Planning for Bush Fire Protection 2006' is also required to be achieved in concert with the above

Access - Internal Roads

The intent of measures 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:

8. Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006', except a reversing bay may be provided in lieu of a loop road around the dwelling or a turning circle. Where a reversing bay is provided it shall be not less than 6 metres wide and 8 metres deep with an inner minimum turning radius of 6 metres and outer minimum radius of 12 metres.

Water and Utility Services

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:

9. In recognition that no reticulated water supply is available to the development, a total of 10,000 litres fire fighting water supply shall be provided for fire fighting purposes to each cabin and the recreation building. 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) 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.

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- c) 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.
- d) A 65mm metal Storz outlet with a gate or ball valve shall be fitted to any fire fighting water supply tank(s) and accessible for a fire fighting truck.
- e) The gate or ball valve, pipes and tank penetration are adequate for the full 50mm inner diameter water flow through the Storz fitting and are constructed of a metal material.
- f) All associated fittings to the fire fighting water supply tank(s) shall be non-combustible.
- g) 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.
- h) 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 (tank or Storz fitting).
- 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 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: The definition of below ground dedicated fire fighting water supply tank(s) is when the outlet valve is located below natural ground level.
- Should a fire fighting water supply tank hold the combined volumes of more than one cabin, then the tanks location will need to consider coverage to all cabins that it holds water for.

10. In recognition that the cabins, recreation building and cooking school building may be connected to a gas supply, the following requirements are to be complied with:
- a. Reticulated or bottled gas is to be installed and maintained in accordance with the current Australian Standard AS/NZS 1596: 'The storage and handling of LP gas' and the requirements of relevant authorities. Metal piping is to be used.
 - b. All fixed gas cylinders are kept clear of all flammable materials to a distance of 10 metres and be shielded on the hazard side of the installation.
 - c. Gas cylinders kept close to the building shall have release valves directed away from the building. Connections to and from gas cylinders are to be metal.
 - d. Polymer sheathed flexible gas supply lines to gas meters adjacent to building are not to be used.
11. Any alteration to the electricity supply network required to service the proposed tourist accommodation development shall comply with either section 4.1.3 of 'Planning for Bush Fire Protection 2006' or the requirements of Essential Energy NSW.

Landscaping Assessment

The intent of measures is for landscaping. To achieve this, the following conditions shall apply:

12. Landscaping of the site, around the proposed cabins, recreation building and cooking school building, shall comply with following principles of Appendix 5 of 'Planning for Bush Fire Protection 2006':
- Suitable impervious areas are provided immediately surrounding the building such as courtyards, paths and driveways.
 - Grassed areas, mowed lawns or ground cover plantings are provided in close proximity to the building.
 - Planting is limited in the immediate vicinity of the building.
 - Planting does not provide a continuous canopy to the building (i.e. trees or shrubs should be isolated or located in small clusters).
 - Landscape species are chosen in consideration needs of the estimated size of the plant at maturity.

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- Species are avoided that have rough fibrous bark, or which keep/shed bark in long strips or retain dead material in their canopies.
- Smooth bark species of tree are chosen which generally do not carry a fire up the bark into the crown.
- Planting of deciduous species is avoided which may increase fuel at surface/ ground level (i.e. leaf litter).
- Climbing species are avoided to walls and pergolas.
- Combustible materials such as woodchips/mulch and flammable fuel are stored away from the building.
- Combustible structures such as garden sheds, pergolas and materials such timber garden furniture are located way from the building.
- Low flammability vegetation species are used.

Emergency and Evacuation Planning Assessment

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:

13. An emergency and evacuation procedure and detailed plans of all Emergency Assembly Areas (on and off-site) is to be prepared in accordance with the RFS "Guidelines for the Preparation of Emergency/Evacuation Plan" and Australian Standard (AS) 4083, or the existing emergency and evacuation plan is appropriately amended to include the currently proposed development. The emergency evacuation plan is to be submitted to the consent authority for approval prior to the occupation certificate being issued. A copy of the approved plan shall also be provided to the Local Bush Fire Management Committee prior to occupation of the site.

14. A pedestrian access pathway is to be provided, to the development, linking the eight proposed cabins to the proposed recreation building. This pathway is to be located on the non-hazard (northern side) of the cabins to enable the tourist accommodation occupants safer egress to the recreation building, that is to be used as a refuge building in the event of bushfire in the landscape.

General Advice – Consent Authority to Note

- Establishment of asset protection zones around the proposed cabins and recreation building may require the clearing of vegetation. This bush fire safety authority does not authorise the clearing of any vegetation, nor does it include an assessment of potential ecological impacts of clearing vegetation for the purpose of establishing asset protection zones. Approvals necessary for the clearing of vegetation should be obtained prior to the establishment of any asset protection zones.

For any queries regarding this correspondence, please contact Bradford Sellings on 1300 NSW RFS.

Yours sincerely,

Paul Creenaune
Team Leader, Dev. Assessment & Planning
Planning and Environment Services



BUSH FIRE SAFETY AUTHORITY

SFPP – Other Tourist Accommodation
841 Fernleigh Rd Brooklet NSW 2479 AUS, (none)
RFS Reference: DA20191123001207-Original-1
Your Reference: (CNR-2705) DA 2019/694

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

This authority confirms that, subject to the General Terms of Approval being met, the proposed development will meet the NSW Rural Fire Service requirements for Bush Fire Safety under s100b of the Rural Fires Act 1997.

Paul Creenaune

Team Leader, Dev. Assessment & Planning
Planning and Environment Services

Monday 24 February 2020