

**ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979**

**DETERMINATION OF DEVELOPMENT APPLICATION NO. 462-11-2003**

**(FILE NO. S03/03210/1)**

**2 LOT SUBDIVISION AND DEVELOPMENT OF A CARETAKERS RESIDENCE AND  
RESTAURANT & TOURIST INFORMATION CENTRE.**

I, the Minister for Infrastructure and Planning, pursuant to Section 80 (1) (a) of the *Environmental Planning & Assessment Act, 1979*, and clause 10 of State Environmental Planning Policy, determine the development application referred to in the attached Schedule 1, by granting consent to the application subject to the conditions of consent in the attached Schedule 2.

The reasons for the imposition of conditions are:

- (1) Minimise the impacts of the development on the environment.
- (2) Ensure the amenity of the existing environment is maintained.
- (3) Ensure appropriate use of the site.

Craig Knowles MP  
**Minister for Infrastructure and Planning**  
**Minister for Natural Resources**

Sydney,

2004

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Diane Beamer MP  
**Minister for Juvenile Justice**  
**Minister for Western Sydney**  
**Minister Assisting the Minister for Infrastructure and Planning**  
**(Planning Administration)**

Sydney,

2004

## SCHEDULE 1

### PART A—TABLE

|                                         |                                                                                                                                                                                                                                                                                                 |
|-----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Application made by:</b>             | Peter & Julie Saravanos<br>PO Box 54<br>Stuarts Point NSW 2441                                                                                                                                                                                                                                  |
| <b>Application made to:</b>             | Minister for Infrastructure and Planning                                                                                                                                                                                                                                                        |
| <b>Development Application:</b>         | No. 462-11-2003                                                                                                                                                                                                                                                                                 |
| <b>On land comprising:</b>              | Lot 1 Part Lot 876 DP 584667<br>Grassy Head Road                                                                                                                                                                                                                                                |
| <b>For the carrying out of:</b>         | Development described in Condition A1, Part A, Schedule 2                                                                                                                                                                                                                                       |
| <b>Estimated Cost of Works</b>          | \$280,000                                                                                                                                                                                                                                                                                       |
| <b>Type of development:</b>             | State Significant Development<br>Integrated Development                                                                                                                                                                                                                                         |
| <b>S.119 Public inquiry held:</b>       | No                                                                                                                                                                                                                                                                                              |
| <b>BCA building class:</b>              | Class 1a (residential) and Class 6 (restaurant and tourist information centre)                                                                                                                                                                                                                  |
| <b>Approval Body / Bodies:</b>          | NSW Rural Fire Service                                                                                                                                                                                                                                                                          |
| <b>Determination made on:</b>           |                                                                                                                                                                                                                                                                                                 |
| <b>Determination:</b>                   | A consent is granted subject to the conditions in the attached Schedule 2.                                                                                                                                                                                                                      |
| <b>Date of commencement of consent:</b> | This development consent commences on the date identified in the formal notification letter accompanying the Determination.                                                                                                                                                                     |
| <b>Date consent is liable to lapse</b>  | This consent will lapse 5 years from the date of commencement of consent, unless: <ul style="list-style-type: none"> <li>▪ a shorter period of time is specified by the Regulations or</li> <li>▪ a condition in Schedule 2, or</li> <li>▪ the development has physically commenced.</li> </ul> |

### PART B—NOTES RELATING TO THE DETERMINATION OF DA NO. 462-11-2003

#### ***Responsibility for other approvals / agreements***

The applicant is solely responsible for ensuring that all additional consents and agreements are obtained from other authorities, as relevant.

**Appeals**

The applicant has the right to appeal to the Land and Environment Court under Section 97 of the *Environmental Planning and Assessment Act, 1979*. The right to appeal is only valid:

- (1) for a development application, within 12 months after the date on which the applicant received this notice, or

**Appeals—Third Party**

A third party right to appeal to this development consent is available under Section 123, subject to Section 101, of the *Environmental Planning and Assessment Act, 1979*.

**Legal notices**

Any advice or notice to the consent authority shall be served on the Director-General.

**Section 94 Conditions**

This development consent contains a levy for development imposed under section 94 of the Act. The imposing of levies were imposed in accordance with Kempsey Shire Council's section 94 Plan. The plan may be inspected at Council's Customer Service Counter, Cnr of Elbow and Tozer Street, West Kempsey.

The specific public amenity or service or both are identified in the monetary contributions conditions in Part B of Schedule 2.

**PART C—DEFINITIONS**

In this consent,

**Act** means the *Environmental Planning and Assessment Act, 1979* (as amended).

**Applicant** means Peter & Julie Saravanos or any party acting upon this consent.

**Approval Body** has the same meaning as within Division 5 of Part 4 of the Act,

**BCA** means the Building Code of Australia.

**Certifying Authority** has the same meaning as Part 4A of the Act.

**Council** means Kempsey Shire Council.

**DA No. 462-11-2003** means the development application and supporting documentation submitted by the applicant on 5 November 2003.

**Department** means the Department of Infrastructure, Planning and Natural Resources or its successors.

**Director** means the Director of the Urban Assessments (or its successors) within the Department.

**Director-General** means the Director-General of the Department.

**Minister** means the Minister for Infrastructure and Planning.

**PCA** means a Principal Certifying Authority and has the same meaning as Part 4A of the Act.

**Regulations** means the *Environmental Planning and Assessment Regulations, 2000* (as amended).

**Subject Site** has the same meaning as the land identified in Part A of this schedule.

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## **SCHEDULE 2**

### **CONDITIONS OF CONSENT**

#### **DEVELOPMENT APPLICATION NO. 462-11-2003**

1. Development consent is granted only to carrying out the development described in detail below:
  - Proposed subdivision of Lot 1 Part Lot 876 DP 584667 into two lots to accommodate a restaurant – tourist information centre and managers residence at 319 Grassy Head Road, Grassy Head for Mr and Mrs P Saravanos. Prepared by Terry Parkhouse Architect, not dated.
  - Revised Coastal Policy and SEPP 71 Assessment for Lot 1 Part Lot 876 DP 584667 319 Grassy Head Road, Grassy Head. Prepared by Yarranbella Environment Services, dated 10 July 2004.
  - Revised Flora and Fauna Assessment for 2 Lot Subdivision for Lot 1 Part Lot 876 DP 584667 319 Grassy Head Road, Grassy Head. Prepared by Yarranbella Environment Services, dated 10 July 2004.
  - Land Capability Assessment for Proposed Lot 1 of Subdivision of 319 Grassy Head Road, Grassy Head – Manager's Residence. Prepared by Ian Watson, dated 20 July 2004.
  - Land Capability Assessment for Proposed Lot 2 of Subdivision of 319 Grassy Head Road, Grassy Head – Restaurant and Tourist Information Centre. Prepared by Ian Watson, dated 20 July 2004.
  - Bushfire Risk Assessment for 2 Lot subdivision 319 Grassy Head Road, Grassy Head. Prepared by Steven Ellis, dated 8 June 2004.
2. The development shall be generally in accordance with development application number DA 462-11-2003 submitted by the applicant on 5 November 2003, and in accordance with the supporting documentation submitted with that application, including, but not limited to, the following:
  - Subdivision Plan titled: Proposed Subdivision, Julie and Peter Saravanos Grassy Head, NSW. Prepared by Steve Harpur & Associates, dated 30 July 2003.
  - Plan titled: Proposed subdivision of Lot 1 Part Lot 876 DP 584667 into two lots to accommodate a restaurant – tourist information centre and managers residence at 319 Grassy Head Road, Grassy Head for Mr and Mrs P Saravanos. Prepared by Terry Parkhouse Architect, dated August 2003.
3. The development consent shall lapse 5 years after the determination date in Part A of Schedule 1 of this consent.
4. The Applicant shall comply with the prescribed conditions of development consent under clause 98 of the Regulation.
6. This consent does not permit commencement of any works. Works are not to commence until such time as a Construction Certificate has been obtained. A

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Construction Certificate may be obtained from Council upon application being made or from an accredited certifier.

7. A Construction Certificate shall not be issued until all relevant conditions of this consent have been complied with.
8. Two days prior to commencing work Form 7 under Environmental Planning and Assessment Act Regulations, Notice of Commencement of Building or Subdivision work and Appointment of Principal Certifying Authority is to be submitted to Council.
9. The building is not to be occupied until all conditions of Council's consent have been complied with and an Occupation Certificate has been obtained from Council or an accredited certifier and submitted to Council.
10. Soil erosion and sediment control measures shall be designed in accordance with the document *Managing Urban Stormwater-Soils & Construction* (NSW Department of Housing, 1998.) Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.
11. Before the commencement of site works, demolition or building, the following activities must be completed:
  - Installation of safety fencing/hoardings between the property and the street.
  - Protection barriers for existing trees.
  - Installation of builder's toilets.
  - Installation of signage in prominent, visible position including -
    - "Unauthorised site entry is prohibited"
    - Name and phone number of builder or other responsible person for contact outside working hours.
12. A schedule of the fire safety measures which are to be installed in the building is to be submitted with the required Construction Certificate for approval together with the minimum Standard of Performance as identified in Clause 80B and C of the Environmental Planning Assessment Regulation 1994.

Detailed plans of each measure prepared by a suitably qualified person are to be submitted for approval with the required Construction Certificate.
13. A Complying Development Certificate is to be obtained for all advertising structures prior to their placement. Where proposed signs do not comply with DCP No 25 – Advertising Signs, development consent will be required.
14. Submission of an application(s) to Council pursuant to Section 68 of the Local Government Act 1993 for the following, prior to the issue of a Construction Certificate:-
  - Installing a temporary structure on land.
  - Carrying out water supply work.
  - Installing, constructing or altering a waste treatment device or a human waste storage facility or a drain connected to any such device or facility.
15. Approval is subject to the condition that the builder or person who does the residential building work complies with the applicable requirements of Part 6 of the Home Building Act 1989 whereby a person must not contract to do any residential building work unless a contract of insurance that complies with this Act is in force in relation to the proposed work. It is the responsibility of the builder or person who is to do the work to satisfy Council that they have complied with the applicable requirements of Part 6.

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Details are to be submitted to Council prior to work commencing.

16. Before work commences, Council must be informed in writing of the name, contact number and contractor licence number of the licensee who has been contracted to do or intends to do the work.
17. All excavation and backfilling are to be executed safely and in accordance with appropriate professional standards, and are to be properly guarded and protected to prevent them from being dangerous to life or property.
18. A sign is to be provided in a prominent and visible position (on the building or fence) stating "Unauthorised entry to the site is not permitted", together with the name of the person responsible for the site and a contact number outside working hours.
19. A copy of the approved and certified plans, specifications and documents incorporating conditions of approval and certification shall be kept on the site at all times and shall be readily available for perusal by any officer of the Department, Council or the PCA.
20. A builder's toilet is required on site throughout the entire building operation. This must be installed and managed to the satisfaction of Council.
21. Compliance with the Building Code of Australia.

All building work must be carried out in accordance with the requirements of the BCA. A construction certificate shall not be issued until the Principal Certifying Authority (PCA) is satisfied that the plans and specifications comply with the BCA.

22. Access and facilities for people with disabilities shall be provided in accordance with Part D3 of the BCA's Access Policy. Prior to the issue of a Construction Certificate, a certificate certifying compliance with this condition from an appropriately qualified person shall be provided to the Certifying Authority.
23. All water fixtures installed within the premises are to have a AAA water rating or more. The applicant shall submit to the Certifying Authority a statement demonstrating compliance with the requirements of this condition.
24. The design and management of facilities for the storage and handling of waste must comply with the requirements of Council's relevant waste policy. Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.
25. The hours of construction, including the delivery of materials to and from the site, shall be restricted as follows:
  - (1) between 7:00 am and 6:00 pm, Mondays to Fridays inclusive;
  - (2) between 8:00 am and 1:00 pm, Saturdays;
  - (3) no work on Sundays and public holidays.

Works may be undertaken outside these hours where:

- (1) the delivery of materials is required outside these hours by the Police or other authorities;
- (2) it is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm;

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- (3) residents likely to be affected by the works are notified of the timing and duration of these works at least 48 hours prior to the commencement of the works.

A sign clearly indicating the hours of work is to be displayed at the entry to the development. Details, including location of signage, are to be provided with the plans for the required Construction Certificate.

26. All loading and unloading in connection with the use of the subject premises shall be carried out wholly within the subject property.
27. Building materials are not to be stored within the road reserve or any other public place.
28. Prior to the commencement of construction, the Applicant shall submit to the satisfaction of the PCA structural drawings prepared and signed by a suitably qualified practising Structural Engineer that comply with:
- the relevant clauses of the Building Code of Australia,
  - the relevant development consent,
  - drawings and specifications comprising the Construction Certificate, and
  - the relevant Australian Standards listed in the BCA (Specification A1.3).
29. Construction of a vehicular access from the road formation to the property boundary in accordance with Council's Standard for Access to Rural Properties. Applicant is to consult Mr Tony Castle of Council's Environmental Services Department for requirements before commencing construction.
30. Roofwaters are to be discharged 3 metres clear of the building with measures incorporated at the discharge point to prevent erosion.
31. Should operations uncover evidence of Aboriginal heritage of the area, or the presence of any threatened, endangered or vulnerable flora and fauna, all work is to cease immediately and the Department of Environment and Conservation (formerly NPWS) and the Local Aboriginal Land Council are to be contacted. No work is to recommence until the DEC permits such works to continue.
32. Prior to the issue of a Subdivision Certificate, the applicant is to provide to the issuing authority, a survey plan of subdivision including a copy of the proposed instrument under Section 88B of the Conveyancing Act 1919, linen plan and six (6) copies in the prescribed form.
33. Applicant is to submit with the final plan of subdivision copies of any instruments under Section 88B or E of the conveyancing Act 1919 relevant to any restrictive covenants assessments or right of way created by or affected by this subdivision. Kempsey Shire Council is to be nominated on any restriction as the sole party to vary, modify or extinguish a restriction.
34. Submission of an application for Subdivision Certificate pursuant to Section 4A of the Environmental Planning and Assessment Act 1979, which authorises the registrations of the plan of subdivision
35. The applicant shall make satisfactory arrangements with Telstra Australia for the provision of underground telephone plant to each lot. A letter from Telstra stating that satisfactory arrangements have been made for the provision of underground telephone plant is to be lodged with Council prior to release of the linen plan.

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36. The applicant is to make satisfactory arrangements with Country Energy for the supply of electricity to each lot. A letter from Country Energy stating that satisfactory arrangements have been made for the provision of underground electricity supply to this development is to be lodged with Council prior to release of the linen plan.
37. Any necessary alterations to or relocations of public utility services are to be carried out at no cost to Council.
38. Submission of an application for a Certificate of Compliance pursuant to Section 305 of the Water Management Act 2000 and the lodgement of a Certificate of Compliance indicating that the requirements of Section 306 of the Water Management Act 2000 have been met, prior to release of the Subdivision Certificate or Construction Certificate, whichever occurs first.
39. You are advised that a Certificate of Compliance pursuant to Division 5 of the Water Management Act 2000 will be issued by Council, subject to the following matters being complied with:-
- i Payment of a contribution towards the augmentation of sewerage headworks at the rate of \$7,411.95 per equivalent tenement, i.e  $\$3,801 \times 1.95 \text{ E.T} = \$7,411.95$ . (Indexed 2004/2005)
  - ii Payment of a contribution towards district water supply at the rate of \$2,361.95 per equivalent tenement, i.e  $\$1,211 \times 1.95 \text{ E.T} = \$2,361.45$ . (Indexed 2004/2005)
  - iii Payment of a contribution towards water supply reticulation works at the rate of \$2486.25 per equivalent tenement, i.e  $\$1275 \times 1.95 \text{ E.T} = \$2486.25$ . (Indexed 2004/2005)
  - iv Relocation of Council's existing water supply main and associated structures in accordance with Council's requirements at full cost to the applicant.
  - v The applicant is to pay a contribution towards the embellishment of open space and ancillary facilities for each additional dwelling unit after the first unit in accordance with Council's Section 94 Plan for Outdoor Recreation. The contribution is to be paid prior to the release of the Construction Certificate or Subdivision Certificate (whichever occurs first), at the rate prevailing at that time. The current rate is \$962 per additional dwelling unit, i.e  $\$962 \times 1 \text{ E.T} = \$962$ . (Indexed 2004/2005)
  - vi The applicant is to pay a contribution towards maintenance of road(s) for tenements on lots for which contributions have not been previously paid in accordance with Council's Section 94 Plan for Rural Roads. prior to the release of the Construction Certificate or Subdivision Certificate (whichever occurs first), at the rate prevailing at that time. The current rate is \$5,496.21 per equivalent tenement, i.e  $\$2,666.95 \times 1.95 \text{ E.T} = \$5,200.55$ . (Indexed 2004/2005)
- A copy of Council's Section 94 Plan may be inspected at Council's offices, corner Elbow and Tozer Streets, West Kempsey.
40. The plans for the required Construction Certificate are to include a "fit out" of the food preparation areas within the restaurant. In this regard detailed plans of all surfaces, fixtures and appliances are to be provided prior to release of the Construction Certificate demonstrating compliance with Council's Code for Food – Commercial Premises.
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41. A Fire Safety Certificate shall be furnished to the PCA for all the Essential Fire or Other Safety Measures forming part of this approval prior to issue of an Occupation Certificate. A copy of the Fire Safety certificate must be submitted to the consent
  42. Recommendations and building standards contained within the application Bushfire Hazard Assessment submitted with the application (including any amendments) are to be incorporated in the development.
  43. Prior to the issue of an Occupation Certificate, the applicant shall provide to the PCA evidence that all easements required by this consent, approvals, and other consents have been or will be registered on the certificates of title.
  44. A Structural Inspection Certificate or a Compliance Certificate must be submitted to the satisfaction of the PCA prior to the issue of an Occupation Certificate and/or use of the premises. A copy of the Certificate with an electronic set of final drawings (contact consent authority for specific electronic format) shall be submitted to the consent authority and the Council after:
    - (1) The site has been periodically inspected and the Certifier is satisfied that the Structural Works is deemed to comply with the final Design Drawings; and,
    - (2) The drawings listed on the Inspection Certificate have been checked with those listed on the final Design Certificate/s.

### ***General Terms of Approval***

#### **Rural Fire Service**

43. Construction should comply with AS 3959 – 1999 level 2 ‘Construction of Buildings in bushfire prone areas’.
44. The property around the dwelling to a distance of 40 metres to the east and south and 20 metres to the west, shall be maintained as an ‘Inner Protection Area’ (IPA) as outlined within section 4.2.2 in Planning for Bushfire Protection 2001.
45. The property around each tourist cabin to a distance of 80 metres, shall be maintained as an ‘Inner Protection Area’ (IPA) as outlined within section 4.2.2 in Planning for Bushfire Protection 2001.
46. The existing tourist cabins should be upgraded to improve ember protection by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen. This may include all subfloor areas and eaves.

.....end of conditions.....

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## **ADVISORY NOTES**

### ***AN1 Compliance Certificate, Water Supply Authority Act, 2000***

Prior to issuing a subdivision certificate, a Compliance Certificate shall be provided to the consent authority showing that the development has met with the detailed requirements of the relevant water supply authority for the region that the subject site is located within.

The developer shall obtain the Compliance Certificate from the relevant local water supply authority and produce this to the satisfaction of:

- (1) the certifying authority before release of the Construction Certificate,
- (2) the consent authority before the release of the subdivision certificate, and
- (3) the principal certifying authority prior to occupation.

### ***AN2 Requirements of Public Authorities for Connection to Services***

The applicant shall comply with the requirements of any public authorities (e.g. Energy Australia, Sydney Water, Telstra Australia, AGL, etc) in regard to the connection to, relocation and/or adjustment of the services affected by the construction of the proposed structure. Any costs in the relocation, adjustment or support of services shall be the responsibility of the applicant. Details of compliance with the requirements of any relevant public authorities are to be submitted to the satisfaction of the PCA prior to the issue of the Construction Certificate.

### ***AN3 Compliance with Building Code of Australia***

The applicant is advised to consult with the PCA about any modifications needed to comply with the BCA prior to submitting the application for a Construction Certificate.

### ***AN4 Construction Inspections***

Compliance certificate/s shall be issued by the Principal Certifying Authority and submitted to Council in accordance with the mandatory inspection requirements of the *Building Legislation Amendment—Quality of Construction Act, 2002* for each stage of construction, such as the following:

- (1) Foundations,
- (2) Footings,
- (3) Damp proof courses and waterproofing installation,
- (4) Structural concrete, including placing of reinforcement and formwork prior to pouring,
- (5) Structural beam and column framing,
- (6) Timber wall and roof framing, and
- (7) Stormwater disposal.

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Any Compliance Certificate issued for the above stages of construction shall certify that all relevant ancillary or dependent work has been undertaken in accordance with the Building Code of Australia and any other conditions of consent.