

Modification of Minister's Consent

Section 75W of the *Environmental Planning and Assessment Act 1979*

As delegate of the Minister for Planning under delegation executed on 1 October 2011, I approve the modification of the project referred to in Schedule 1, subject to the conditions in Schedule 2.



Heather Warton
Director
Metropolitan and Regional Projects North

Sydney, 26 November 2012

File No. S09/01337
MOD2 DA 462-11-2003

SCHEDULE 1

Development Consent:	Granted by the former Minister Assisting the former Minister for Infrastructure and Planning on 6 December 2004.
For the following:	2 lot subdivision and development of a caretaker's residence and restaurant and tourist information centre at Lot 1 DP Part 876 DP 584667 319 Grassy Head Road, Grassy Head.
Modification:	Modification of the development consent to amend the approved location of the caretaker's residence on Lot 11 DP 1091149.

SCHEDULE 2

The development consent is modified by:

1) Replacing the third dot point of Condition 2 with the following:

- Plan titled: Construction Certificate Plan prepared by Paul Smith Building Design numbered 09-160, Amendment 'F' dated 9 June 2009.

2) Amend Condition 42:

Recommendations and building standards contained within the Bushfire Hazard Assessment submitted with the application (including any amendments) and the modified plans prepared by Paul Smith Building Design numbered 09-160

Amendment F Sheet 1 of 1, dated 9 June 2009 are to be incorporated in the development.

General terms of approval

- 3) **deleting conditions 43 & 44 to be replaced with one new condition 43A as follows:**

The property surrounding the proposed dwelling for a distance of 27 metres or to the property boundary shall be managed as an Inner Protection Area as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

- 4) **deleting condition 46 to be replaced with new condition 46A as follows:**

New construction on the north eastern and north western elevations (as identified on the approved plan) shall comply with Sections 3 and 8 (BAL 40) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.

New construction on the south eastern and south western elevations (as identified on the approved plan), shall comply with Sections 3 and 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.

SCHEDULE 2

CONDITIONS OF CONSENT CONSOLIDATED CONSENT FOR INFORMATION

DEVELOPMENT APPLICATION NO. 462-11-2003 MODIFICATION DA 462-11-2003 MOD 2

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, Mod 1 462-11-2003 submitted by the applicant on 19 June 2009 and Mod 2 462-11-2003 submitted by the applicant on 27 September 2012, 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.
 - Plan titled: Plan titled: Construction Certificate Plan prepared by Paul Smith Building Design numbered 09-160, Amendment 'F' dated 9 June 2009. **[Amended by MOD2 26.11.12]**
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 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 – Volume 1* (NSW Landcom, March 2004.) 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.

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.

- 21A. Prior to construction, a colour scheme schedule outlining the materials and finishes for the dwelling and tourist cabins shall be submitted to Council for approval. The colour scheme shall be sensitive to the surrounding natural environment.
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;
- (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.
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.
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 Bushfire Hazard Assessment submitted with the application (including any amendments) and the modified plans prepared by Paul Smith Building Design numbered 09-160 Amendment F Sheet 1 of 1, dated 9 June 2009 are to be incorporated in the development. **[Amended by MOD2 26.11.12]**
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

Asset Protection Zones

43. Deleted. **[MOD2 26.11.12]**
- 43A. The property surrounding the proposed dwelling for a distance of 27 metres or to the property boundary shall be managed as an Inner Protection Area as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'. **[Amended by MOD2 26.11.12]**
44. Deleted. **[MOD2 26.11.12]**
45. The property surrounding each proposed tourist cabins for a distance of 80 metres, shall be managed as an Inner Protection Area as outlined within section 4.2.7 Appendix 5 of 'Planning for Bush Fire Protection 2006' and NSW Rural Fire Service's document 'Standards for asset protection zones'.

Design and Construction

46. Deleted. **[MOD2 26.11.12]**

- 46A. New construction on the north eastern and north western elevations (as identified on the approved plan) shall comply with Sections 3 and 8 (BAL 40) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.

New construction on the south eastern and south western elevations (as identified on the approved plan), shall comply with Sections 3 and 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'. **[Amended by MOD2 26.11.12]**

47. The existing tourist cabins are required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen. Where applicable, this includes any sub floor areas, openable windows, doors, vents, weepholes and eaves.

Landscaping

48. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning of Bush Fire Protection 2006'.

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

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.

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.