

**From:** [Dimitri Young](#)  
**To:** [Shannon Burt \(Byron Council\)](#)  
**Cc:** [Hill, Andrew](#); [Scott, Noreen](#); [Andrew Stone](#); [Trent Gearside](#)  
**Subject:** RE: Terrace and OEH  
**Date:** Thursday, 7 June 2018 5:17:45 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Hi Shannon

Apologies for the delay in providing this email.

Since our recent discussion, I have spoken with Andrew Stone and provide the following as my understanding of the Byron Shire Council's position on this matter and OEH's role and comments.

#### Approval to Operate

1. The Reflections Holiday Parks Trust (the proponent) has lodged an application with the Byron Shire Council seeking an approval to operate under the Local Government Act.
2. The council has decided it requires the appropriate approval pathway in the EP&A Act to be ascertained and followed to completion before it will determine the application for the approval to operate.

#### Part 4 EP&A Act

1. The proponent must clearly demonstrate whether or not the proposal requires development consent under Part 4 of the EP&A Act. This includes considering the land uses that require such consent in the RE1 zone under the Byron LEP.
2. If development consent is required, then the Byron Shire Council expects a development application to be lodged and to be determined before the council determines the application for the approval to operate.

#### Part 5 EP&A Act

1. If development consent is not required, then the proponent must clearly demonstrate that it has ministerial authority in writing to act as a public authority.
2. If this can be established, then the council expects an assessment of the activity under Part 5 of the EP&A Act to be undertaken (usually via a Review of Environmental Factors), a determination made, and then any subsequent approvals obtained, such as an approval from the council under its DCP for the vegetation clearing, before the council will determine the application for the approval to operate.

#### Vegetation SEPP

1. If development consent or an activity determination are not required for the proposal, then the Vegetation SEPP may apply.
2. If the proponent establishes that the proposal triggers the biodiversity offset scheme thresholds, then under the Vegetation SEPP approval for the clearing will need to be obtained from the Native Vegetation Panel before the council determines the application for the approval to operate.

#### Byron Shire Council's DCP

1. If development consent or an activity determination are not required for the proposal and the biodiversity offset scheme thresholds are not triggered under the Vegetation SEPP, then the proponent will need to obtain an approval from the council under its DCP for the vegetation clearing before the council determines the application for the approval to operate.

#### OEH's Role

1. OEH has no statutory role in the Part 4 EP&A Act process, unless a BDAR is required and the consent authority decides to discount the offsets.
2. OEH has no statutory role in the Part 5 EP&A Act process, unless a species impact statement is required, or unless a BDAR is prepared and the determining authority decides to discount the offsets.
3. OEH has no statutory role in the Vegetation SEPP or council DCP processes.
4. In all instances though, OEH can provide advice on request for biodiversity, Aboriginal cultural heritage, historic heritage, flooding, acid sulphate soils and coast and estuary management.

OEH Comments (Red Bold) on Key Points Provided by Reflections

- With respect to the works proposed in the Ecologist Report and Arborist Report:
  - As there is an adopted plan of management for Terrace Reserve, NSWCHPT would rely upon Part 5 of the EP&A Act planning approval to progress the works (under an REF), **As long as Reflections can provide evidence that it can act as a public authority and that development consent under Part 4 EP&A Act is not required.**
  - Dimitri advised that OEH are not an authority under Part 5 **OEH has no statutory role in the Part 5 EP&A Act process, unless a species impact statement is required, or unless a BDAR is prepared and the determining authority decides to discount the offsets.**
  - The test of significance (5-Part Test) would not be triggered when following part 5. (required under part 4 only). **The test of significance is required for Part 5 matters under the Biodiversity Conservation Act.**
  - The requirement to carry out a Bio Diversity Assessment would not be triggered when following part 5. (required under part 4 only). **A biodiversity assessment should be undertaken before the test of significance can be applied. Otherwise the answers to the five questions cannot be substantiated.**
  - In the event that the test of significance was required, the primary test would be to determine if the critical tree(s) were part of a contiguous forest and then the impact of the action would be assessed based on the relative portion affected and its likely impact on the entire community rather than the individual trees affected (commentary only noting that the southern precinct of the park is a small part of a much larger EEC). **To answer the questions for endangered ecological communities in the test of significance the ecologist must identify the local occurrence of the Cypress Pine EEC as defined in the assessment of significance guidelines. If the impact is only on a small proportion of the local occurrence of the Cypress Pine EEC, then that EEC may be unlikely to be placed at risk of extinction. It is only a contiguous area of that EEC which forms the local occurrence, not any contiguous vegetation.**
  - OEH may review the arborist's/ecologist's report and provide non-statutory advice to assist both the council and the Trust. Dimitri suggested that politically, the request for this advice would best come from council. **Agree, but this is up to the council.**

Recapping, with respect to ByronSC's review and approval of NSWCHPT's License to Operate:

- OEH are not the authority to assess the request, OEH has no decision making capacity under the LGA section 68. **Agree**
- ByronSC may request OEH to review and provide advice however the responding advice would be merely procedural, not statutory **Agree but after consideration, council may decide to follow OEH's advice.**

Happy to discuss

Cheers

D

**Dimitri Young**

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**From:** Hill, Andrew [mailto:andrew.hill@byron.nsw.gov.au]

**Sent:** Wednesday, 30 May 2018 9:48 AM

**To:** Dimitri Young <Dimitri.Young@environment.nsw.gov.au>

**Cc:** Shannon Burt (Byron Council) <shannon.burt@byron.nsw.gov.au>; Scott, Noreen <noreen.scott@byron.nsw.gov.au>

**Subject:** FW: Terrace and OEH

Dear Dimitri,

Council has received the email below from Reflections Holiday Parks Trust.

Shannon Burt has asked if we could have a conference call with you at 2pm today to discuss the advice below.

Would you most kindly advise if you are available at this time.

Yours sincerely

[Andrew Hill](#) | Team Leader Community Enforcement | BYRON SHIRE COUNCIL

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**From:** Trent Gearside  
**Sent:** Tuesday, May 29, 2018 6:07:52 PM  
**To:** Burt, Shannon; Arnold, Mark  
**Cc:** Andrew Stone; Steve Edmonds; Greg Asher  
**Subject:** Terrace and OEH

Hi Shannon,

I spoke with Dimitri Young from OEH and he confirmed that he had spoken to you and was happy to provide assistance.

The key points noted are as follows:

- With respect to the works proposed in the Ecologist Report and Arborist Report:
  - As there is an adopted plan of management for Terrace Reserve, NSWCHPT would rely upon Part 5 of the EP&A Act planning approval to progress the works (under an REF),
  - Dimitri advised that OEH are not an authority under Part 5
  - The test of significance (5-Part Test) would not be triggered when following part 5. (required under part 4 only)
  - The requirement to carry out a Bio Diversity Assessment would not be triggered when following part 5. (required under part 4 only)
  - In the event that the test of significance was required, the primary test would be to determine if the critical tree(s) were part of a contiguous forest and then the impact of the action would be assessed based on the relative portion affected and its likely impact on the entire community rather than the individual trees affected (commentary only noting that the southern precinct of the park is a small part of a much larger EEC).
  - OEH may review the arborist's/ecologist's report and provide non-statutory advice to assist both the council and the Trust. Dimitri suggested that politically, the request for this advice would best come from council.

Recapping, with respect to ByronSC's review and approval of NSWCHPT's License to Operate:

- OEH are not the authority to assess the request, OEH has no decision making capacity under the LGA section 68.
- ByronSC may request OEH to review and provide advice however the responding advice would be merely procedural, not statutory

Dimitri confirmed he is available to discuss in detail with ByronSC if required. We would propose a phone hookup with Dimitri, yourself and us tomorrow at a time convenient to you as this would expedite clarity in our path forward. My suggestion would be that the reports were provided to OEH urgently to seek their non-statutory advice noting to the councillors that this is the appropriate planning pathway and that the advice is non-binding however will serve as a guide to council and the Trust in ensuring the appropriate management of the trees.

Happy to discuss further and appreciate the urgency. Thanks.

**Trent Gearside**

Executive Manager - Capital Works

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e: [Trent.Gearside@reflectionsoliday.com.au](mailto:Trent.Gearside@reflectionsoliday.com.au)

w: [reflectionsolidayparks.com.au](http://reflectionsolidayparks.com.au)

NSW Crown Holiday Parks Trust trading as:



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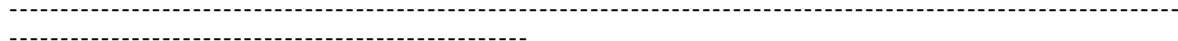
Reflections Holiday Parks is the Trading Name for NSW Crown Holidays Parks Trust

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