



## Land and Environment Court New South Wales

Case Name: **NSW Crown Holiday Parks Land Manager trading as Reflections Holiday Parks Terrace Reserve v Byron Shire Council (No 2)**

Medium Neutral Citation: [2021] NSWLEC 51

Hearing Dates: 8-9 March 2021, 16, 26 April 2021, 18 May 2021

Date of Decision: 25 May 2021

Jurisdiction: Class 2

Before: Pain J

Decision: See [93]-[97] of judgment

Catchwords: APPEAL – activity approval for caravan park and camping ground operated on Crown land – impact on endangered ecological community from camping in southern precinct – whether approval consistent with ecologically sustainable development principles – objections to compliance with local government regulation requirements acceptable – approval to be granted subject to conditions including compliance with vegetation management plan

Legislation Cited: *Biodiversity Conservation Act 2016* (NSW) Sch 2  
*Crown Lands Act 1989* (NSW) s 114  
*Land and Environment Court Act 1979* (NSW) s 39  
Local Government (Manufactured Homes Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 regs 4, 70, 72, 88, 89, 91, 92, 93, 94  
*Local Government Act 1993* (NSW) Ch 7 Pt 1 (ss 68, 82, 89, 94, 96), Dictionary  
*Roads Act 1993* (NSW) s 138  
*Crown Land Management Act 2016* (NSW) ss 3.36, 3.39, Sch 8

Cases Cited: *Jonah Pty Limited v Pittwater Council* (2006) 144 LGERA 48; [2006] NSWLEC 99

Texts Cited: Byron Development Control Plan 2014  
Byron Local Approvals Policy 2018

Category: Principal judgment

Parties: NSW Crown Holiday Parks Land Manager trading as Reflections Holiday Parks Terrace Reserve (Applicant)  
Byron Shire Council (Respondent)

Representation: COUNSEL:  
M Hall SC (Applicant)  
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SOLICITORS:  
Sparke Helmore (Applicant)  
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File Number: 19/340060

## JUDGMENT

- 1 NSW Crown Holiday Parks Land Manager trading as Reflections Holiday Parks Terrace Reserve (the Applicant) appeals against the deemed refusal of its activity approval application no 88.2019.2.1 (the Application) to operate an existing caravan park and camping ground on land known as the Terrace Reserve in Brunswick Heads (the Park). The Application is made pursuant to s 68 (Pt F) of the *Local Government Act 1993* (NSW) (LG Act).
- 2 The Application received by Byron Shire Council (the Council) on 7 August 2019 seeks approval to operate the existing caravan and camping ground at the Park, which operates across an area divided into the northern, central and southern precincts. The Applicant commenced these proceedings in Class 2 of the Court's jurisdiction appealing against the deemed refusal of the Application. At issue is the use of the southern section as a camping ground. The Council opposes that use because of on-going serious harm to the Coastal Cypress Pine Forest (CCPF) community, an endangered ecological community (EEC) under the *Biodiversity Conservation Act 2016* (NSW) (BC Act). No issue arises in relation to the use of the northern and central precincts if I am satisfied about objections to complying with some requirements in the relevant local government regulation.
- 3 The Park has been operating as a caravan park and campground for several decades and was managed by the Council as a reserve trust manager until late 2006. In December 2006 management was transferred to the Crown. The current plan of management (POM) was approved by the Minister pursuant to s 114 of the *Crown Lands Act 1989* (NSW) (since repealed) and has been in force since April 2014. The POM says that the land is reserved for "Public Recreation and Resting Place". The POM includes a vegetation management plan (VMP) dated 21 January 2011. The *Crown Lands Act* was repealed in 2018 when the *Crown Land Management Act 2016* (NSW) (CLM Act) was passed. Any future POM will be approved by the Minister under s 3.36 of the CLM Act.

- 4 The Court went on a view of the Park and surrounds in the company of the parties, their experts and objectors on the first day of the hearing.

## **Legislation**

*Local Government Act 1993 (NSW)*

- 5 Relevant sections of the LG Act provide:

### **Chapter 7 What are the regulatory functions of councils?**

#### **Part 1 Approvals**

##### **Division 1 What activities require approval?**

###### **68 What activities, generally, require the approval of the council?**

- (1) A person may carry out an activity specified in the following Table only with the prior approval of the council, except in so far as this Act, the regulations or a local policy adopted under Part 3 allows the activity to be carried out without that approval.

...

#### **Table**

##### **Approvals**

...

##### **Part F Other activities**

- 2 Operate a caravan park or camping ground

...

##### **Division 3 Making and determination of applications for approval—generally**

...

###### **82 Objections to application of regulations and local policies**

- (1) An applicant for an approval may lodge with the council an objection—
- (a) that the regulations or a local policy adopted under Part 3 by the council relating to the activity for which approval is sought do not make appropriate provision with respect to that activity, or
  - (b) that compliance with any provision of those regulations or such a policy is unreasonable or unnecessary in the particular circumstances of the case.

- (2) The applicant must specify the grounds of the objection.
- (3) If the objection relates to the regulations and the council is satisfied that the objection is well founded, it may, with the concurrence of the Departmental Chief Executive, in determining the application, direct that—
  - (a) such provisions of any regulation relating to that activity as are specified in the direction—
    - (i) are not to apply, or
    - (ii) are to apply with such modifications as are specified in the direction,
 in respect of the carrying out of that activity, or
  - (b) such requirements as are specified in the direction are to apply to the carrying out of that activity,
 or give directions under both paragraphs (a) and (b).

...

## **89 Matters for consideration**

- (1) In determining an application, the council—
  - (a) must not approve the application if the activity or the carrying out of the activity for which approval is sought would not comply with the requirements of any relevant regulation, and
  - (b) must take into consideration any criteria in a local policy adopted under Part 3 by the council which are relevant to the subject-matter of the application, and
  - (c) must take into consideration the principles of ecologically sustainable development.
- (2) If no requirements are prescribed for the purposes of subsection (1)(a), and no criteria are adopted for the purposes of subsection (1)(b), the council in determining an application—
  - (a) is to take into consideration, in addition to the principles of ecologically sustainable development, all matters relevant to the application, and
  - (b) is to seek to give effect to the applicant's objectives to the extent to which they are compatible with the public interest.
- (3) Without limiting subsection (2), in considering the public interest the matters the council is to consider include—
  - (a) protection of the environment, and
  - (b) protection of public health, safety and convenience, and

- (c) any items of cultural and heritage significance which might be affected.

...

#### **94 Determination of application**

- (1) The council may determine an application—
  - (a) by granting approval to the application, either unconditionally or subject to conditions, or
  - (b) by refusing approval.
- (2) This section does not affect section 72.

...

#### **96 Staged approval**

- (1) An approval may be granted—
  - (a) for the activity or one or more of the activities for which the approval is sought, or
  - (b) for such an activity, except for a specified part or aspect of the activity, or
  - (c) for a specified part or aspect of such an activity.
- (2) Such an approval may be granted subject to a condition that the activity or the specified part or aspect of the activity, or any thing associated with the activity or the carrying out of the activity, must be the subject of—
  - (a) a further approval, or
  - (b) a consent, approval or permission under another Act,or both.

...

#### **Dictionary**

...

***principles of ecologically sustainable development*** means the following statements of principle—

Ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs—

- (a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by—

- (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
  - (ii) an assessment of the risk-weighted consequences of various options,
- (b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations,
  - (c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,
  - (d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as—
    - (i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,
    - (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,
    - (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

*Local Government (Manufactured Homes Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005*

- 6 Relevant sections of the Local Government (Manufactured Homes Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 (LG Regulation 2005) provide:

**Part 1 Preliminary**

...

#### **4 Definitions**

(1) In this Regulation—

...

***community map***—

...

(b) in relation to a caravan park or camping ground—means a scale map that accurately shows—

- (i) the access roads, community amenities and community buildings within the caravan park or camping ground, and
- (ii) the number, size, location and dimensions of dwelling sites or camp sites within the caravan park or camping ground, and
- (iii) in relation to a dwelling site or camp site within the caravan park or camping ground, the particular off-site parking space or spaces (if any) designated for use by the occupier of the dwelling site or camp site.

...

### **Part 3 Caravan parks, camping grounds and moveable dwellings**

#### **Division 1 Application of Part**

##### **70 Application of Part**

This Part applies to the operation of caravan parks and camping grounds, and to the installation of moveable dwellings (including manufactured homes) in caravan parks and camping grounds and elsewhere, but does not apply to the installation of manufactured homes in manufactured home estates.

#### **Division 2 Approvals and exemptions**

##### **Subdivision 1 Operation of caravan parks and camping grounds**

...

##### **72 Matters to be specified in approval**

(1) In addition to any other matters it must contain, an approval to operate a caravan park or camping ground must specify the following—

- (a) whether the approval allows—
  - (i) the operation of a caravan park only, or
  - (ii) the operation of a camping ground only, or
  - (iii) the operation of both a caravan park and a camping ground,



- (b) in the case of an approval that allows the operation of a caravan park—
    - (i) the number, size and location of long-term sites allowed by the approval, and
    - (ii) the number, size and location of short-term sites allowed by the approval, and
    - (iii) the number, size and location of dwelling sites (whether long-term or short-term) to be reserved for self-contained moveable dwellings, and
    - (iv) the location of any off-site parking spaces for dwelling sites,
  - (c) in the case of an approval that allows the operation of a camping ground—
    - (i) whether the camping ground is to be a primitive camping ground, and
    - (ii) in the case of an approval for the operation of a primitive camping ground that designates camp sites, the number, size and location of the camp sites allowed by the approval, and
    - (iii) in the case of an approval for the operation of a primitive camping ground that does not designate camp sites, the maximum number of caravans, campervans and tents that are permitted to use the camping ground at any one time, and
    - (iv) the location of any off-site parking spaces for camp sites,
  - (d) the location of any flood liable land in the caravan park or camping ground.
- (2) The numbers, sizes and locations referred to in subclause (1) must be specified by reference to a community map.
  - (3) The approval is to specify that, in the calculation for the purposes of subclause (1)(c)(iii) of the number of tents using a camping ground, 2 or more tents occupied by a group of not more than 12 persons camping together as a group are to be counted as only one tent.

...

### **Division 3 Caravan parks and camping grounds**

...

#### **Subdivision 2 Setbacks**

##### **88 Setbacks of community buildings**

- (1) A community building must not be located closer than 10 metres to the boundary of a caravan park or camping ground, or to the boundary of a

dwelling site or camp site, unless the approval for the caravan park or camping ground so allows.

- (2) The approval for a caravan park or camping ground must not allow a lesser distance than 10 metres unless the council is satisfied that the community building has been or will be properly screened, fenced, enclosed or otherwise treated.
- (3) A community building must not in any case be located closer than 3 metres to the boundary of a caravan park or camping ground or 5 metres to the boundary of a dwelling site or camp site.

#### **89 Setbacks of dwelling sites and camp sites from road frontages**

- (1) A dwelling site or camp site must not be located closer than 10 metres to a public road or 3 metres to any other boundary of the caravan park or camping ground unless the approval for the caravan park or camping ground so allows.
- (2) The approval for a caravan park or camping ground must not allow a lesser distance unless the council is satisfied that the dwelling site or camp site has been or will be properly screened, fenced, enclosed or otherwise treated.

...

#### **91 Separation distances**

- (1) A moveable dwelling must not be installed closer to any other moveable dwelling than—
  - (a) 3 metres, if it is situated on a long-term site, or
  - (b) 2.5 metres, if it is situated on a short-term site or camp site.
- (2) This clause does not prohibit the installation of semi-detached relocatable homes on adjoining dwelling sites so long as they are separated by construction conforming to the fire safety and sound insulation provisions relating to class 1 buildings contained in Section 3.7.1 and 3.8.6 of Volume Two of the *Building Code of Australia*.
- (3) (Repealed)

#### **Subdivision 3 Roads**

#### **92 Entrance and exit roads**

- (1) A road that forms an entrance to or exit from a caravan park or camping ground must be at least 7 metres wide.
- (2) In the case of a divided road, the width of the sealed portion of the road on either side of the median strip must be at least 5 metres.
- (3) The arrangement for the width of an entrance or exit road to taper into or meet the width of the sealed portion of the access roads leading to the

entrance or exit must be as specified in the approval for the caravan park or camping ground.

### **93 Forecourt**

A caravan park must have a forecourt, measuring at least 4 metres by 20 metres, to accommodate incoming vehicles.

### **94 Width of roads**

- (1) The width of an access road must be—
  - (a) at least 6 metres for a two-way access road, and
  - (b) at least 4 metres for a one-way access road.
- (2) The direction of travel for a one-way access road must be indicated by means of conspicuous signs.

### *Crown Lands Act 1989 (NSW)*

7 The *Crown Lands Act* was repealed by Sch 8 of the CLM Act with effect from 1 July 2018.

8 Section 114 of the *Crown Lands Act* provided:

#### **Part 5 Dedication and reservation of land**

...

#### **Division 6 Plans of management**

...

#### **114 Adoption of plan**

- (1) The Minister may adopt a plan of management for a reserve without alteration or with such alterations as the Minister thinks fit.
- (2) If a plan of management is adopted:
  - (a) the reserve trust shall carry out and give effect to it, and
  - (b) no operations may be undertaken on or in relation to the reserve unless they are in accordance with the plan.

### *Crown Land Management Act 2016 (NSW)*

9 The CLM Act came into force on 1 July 2018. Relevant provisions provide:

### **Part 3 Management of Crown land**

...

#### **Division 3.6 Plans of management and other plans**

...

##### **3.36 Adoption of plan of management**

- (1) The Minister may adopt a plan of management for dedicated or reserved Crown land without alteration or with any alterations that the Minister thinks fit.

...

- (3) If a plan of management is adopted—
- (a) the applicable Crown land manager concerned must carry out and give effect to it, and
  - (b) no activities may be undertaken on or in relation to the dedicated or reserved Crown land to which it relates unless they are in accordance with the plan, and
  - (c) the applicable Crown land manager must ensure that all leases or licences over the dedicated or reserved Crown land that the manager grants include a provision that requires their holders to comply with the requirements of any plan of management in force for the land from time to time that are relevant to the holders' use or occupation of the land.

...

##### **3.39 Approvals of activities under Local Government Act 1993 must comply with plans of management**

A local council cannot grant an approval for an activity under Part 1 of Chapter 7 of the *Local Government Act 1993* that authorises or requires a person to do (or not to do) anything on or in relation to dedicated or reserved Crown land that would result in a contravention of a plan of management for the land.

#### *Land and Environment Court Act 1979 (NSW)*

- 10 Relevant sections of the *Land and Environment Court Act 1979 (NSW)* (LEC Act) provide:

##### **Part 4 Exercise of jurisdiction**

...

##### **Division 4 Special provisions respecting Class 1, 2 or 3 proceedings**

...

### **39 Powers of Court on appeals**

- (1) In this section, **appeal** means an appeal, objection, reference or other matter which may be disposed of by the Court in proceedings in Class 1, 2 or 3 of its jurisdiction.
- (2) In addition to any other functions and discretions that the Court has apart from this subsection, the Court shall, for the purposes of hearing and disposing of an appeal, have all the functions and discretions which the person or body whose decision is the subject of the appeal had in respect of the matter the subject of the appeal.
- (3) An appeal in respect of such a decision shall be by way of rehearing, and fresh evidence or evidence in addition to, or in substitution for, the evidence given on the making of the decision may be given on the appeal.
- (4) In making its decision in respect of an appeal, the Court shall have regard to this or any other relevant Act, any instrument made under any such Act, the circumstances of the case and the public interest.
- (5) The decision of the Court upon an appeal shall, for the purposes of this or any other Act or instrument, be deemed, where appropriate, to be the final decision of the person or body whose decision is the subject of the appeal and shall be given effect to accordingly.
- (6) Notwithstanding any other provision of this section, if an appeal relates to an application made to a council within the meaning of the *Local Government Act 1993* or a consent authority within the meaning of the *Environmental Planning and Assessment Act 1979* and that council or consent authority may not approve of, consent to, or deal with, or grant a permission in respect of, the application except after consultation with, or with the concurrence or approval of, any person or body—
  - (a) the Court may determine the appeal whether or not the consultation has taken place and whether or not the concurrence or approval has been granted, and
  - (b) in a case where the concurrence or approval has been granted—the Court may vary or revoke any conditions imposed by that person or body or may impose any conditions that could have been imposed by that person or body.
- (6A) (Repealed)
- (7) The functions of the Court under this section are in addition to and not in derogation from any other functions of the Court.

...

## **Planning instruments**

*Byron Development Control Plan 2014*

11 The Byron Development Control Plan 2014 (BDCP 2014) provides in part:

#### **E4.3.5 Biodiversity Conservation**

##### **Objectives**

1. To ensure that development takes into account and, where appropriate, contributes to the biodiversity values of Brunswick Heads and its surrounds.

##### **Performance Criteria**

Development applications must:

- a) address and identify biodiversity, connectivity, corridor and riparian values of the site, including its relationship to adjoining land, riparian areas, open space areas and the wider locality;
- b) where biodiversity, connectivity, corridor and/ or riparian values are present, outline a strategy to protect and enhance those values;
- c) include a strategy for removal and ongoing management of weeds and Camphor Laurel trees on the site.

##### **Prescriptive Measures**

There are no Prescriptive Measures

#### *Byron Local Approvals Policy 2018*

12 The Byron Local Approvals Policy 2018 applies to the Council's regulatory function to grant approvals under s 68 of the LG Act, including for the operation of a caravan park or camping ground (Pt F(2)). Section 17 of the Byron Local Approvals Policy provides:

#### **17. Council's Development Control Plans and Policies**

Council's Development Control Plans and Policies listed hereunder are included as criteria for the assessment of applications where relevant, unless the activity is exempted under Part 1 of this Policy.

##### **17.1. Development Control Plans**

- Development Control Plans as adopted by Council.

##### **17.2. Council Policies**

- All relevant Council policies, as formally adopted by Council.

## Contentions

- 13 The Council identified two contentions in the amended statement of facts and contentions (ASOFAC) dated 15 January 2021 (Ex 1). These largely overlap.

### *Adverse environmental impacts and principles of ecologically sustainable development*

- 14 The application should be refused to avert the threat of serious and irreversible harm to the CCPF EEC within the Park. The information submitted with the Application does not demonstrate that the threatened environmental harm can be avoided, mitigated or offset to an acceptable degree in accordance with the requirements of the “precautionary principle”. Section 89(1)(c) of the LG Act provides that in determining an application, the council must take into consideration the principles of ecologically sustainable development (ESD). The principles of ESD are defined in the Dictionary to the LG Act.
- 15 The Park is known to contain two EEC's being: CCPF in the New South Wales (NSW) North Coast Bioregion and Littoral Rainforest in the NSW North Coast, Sydney Basin and South East Corner Bioregions. Both EEC's are listed in Sch 2 of the BC Act. CCPF is the dominant vegetation community in the reserve, covering the south area of the reserve and extending north over the southern and central precincts of the Park. In the central precinct the community has been reduced to isolated trees, while in the southern precinct mature stands of CCPF remain interspersed amongst short-term camp sites. Mid-storey and understorey vegetation in the Park have been largely removed as a result of recreational and camping activities occurring over several decades.
- 16 On the basis of available information, the continued operation of the Park has the potential to result in serious harm to the CCPF present in the central and southern precincts. These impacts are not consistent with the principles of ESD, particularly having regard to the precautionary principle. The precautionary principle imposes an obligation on the decision-maker to address uncertainty in the assessment process and to ensure that potential threats to the environment

are taken into account. There are various matters to be considered in determining the application of the precautionary principle.

**Does the activity pose a threat of serious and irreversible environmental damage?**

- 17 The CCPF EEC has a highly restricted distribution. The scientific determination that listed CCPF as an EEC estimated that the area occupied by the community may have declined by more than 77% since European colonisation, with a total remaining distribution of approximately 150 ha and less than 200 ha. The conservation of CCPF is further limited by the environmental constraints on the occurrence of the community – CCPF typically occurs on the inland side of the coastal sandplain on low rises that represent eroded Pleistocene backbarrier dunes. This represents a relatively small band of land adjacent to the coastline that is substantially developed and will be subject to further ongoing development pressure.
- 18 Given the widespread contraction of the community's distribution as well as its environmental constraints, it is considered that any loss to the remaining extent of the community should be regarded as serious and irreversible.
- 19 Threats to the CCPF EEC in the Park include encroachment, soil compaction, damage to tree roots, hardening of surfaces, alteration of drainage, removal of branches, trampling of seedlings, damage to coastal cypress trees from guy ropes and tent pegs, the introduction of weeds and exotic grasses and damaging pruning techniques causing stress to the existing trees. The use of areas within the tree protection zone (TPZ) / structural root zone (SRZ) of the trees is causing stress to the existing trees. The continuous removal of trees due to perceived but unsubstantiated risk will result in the gradual removal of the existing trees.
- 20 The ongoing management and use of the Park will continue to place stress and strain on the existing trees. The structural diversity, natural recruitment, development of tree hollows and species diversity will be actively suppressed. This will inevitably result in the gradual removal of all of the existing trees.



- 21 Alone and in combination, these threats have the potential to reduce the function and extent of the EEC by impacting tree health and impairing the natural ecological and regenerative processes of the community. As mature trees are removed for safety reasons (or lost due to old age), there is an absence of younger emerging trees to replace them. The end result is a decline in the extent of the community through time and a localised extinction in a worst-case scenario.

**Is there scientific uncertainty as to the nature and scope of the environmental threat?**

- 22 The parties have drawn different conclusions as to the scope and severity of the potential environmental damage caused by approval of the Application. The Council contends that the overall conflict between the continuing operations of a caravan park within an EEC have not been properly considered. The ongoing use of the southern precinct will likely have a substantial impact on the composition and extent of the CCPF such that it could face risk of localised extinction. In this regard, the use of areas within the TPZ / SRZ of the trees is causing stress to the existing trees. The method of assessing the risk from the trees is not defined and appears to be a purely subjective assessment.

**Is the precautionary principle activated?**

- 23 The precautionary principle is considered to be activated. Evidence exists which indicates that the proposed activity poses a genuine threat to the CCPF EEC by reducing its function and extent over time. Due to the rarity and highly restricted distribution of the community, any reduction in extent is deemed to be serious and irreversible. There is considerable uncertainty over the scope and severity of the threatened environmental harm which is evident in the divergent views amongst the expert reports. Given this uncertainty and the seriousness of the potential threat, a precautionary approach is needed in determining the Application to limit the threat of environmental harm to an acceptable level. In the absence of suitable options, refusal of the Application is required as a means of averting the threat of serious and irreversible harm to the CCPF EEC within the Park. The Application should be refused because the

Court would not be satisfied that the proposal is consistent with the principles of ESD, in particular the precautionary principle noting s 89(1)(c) of the LG Act.

*Impacts on biological diversity and ecological integrity*

- 24 The Application should be refused because the proposed activity is likely to have a serious and irreversible impact on the CCPF EEC within the Park. Insufficient information is available to demonstrate how biodiversity will be conserved if the Application is approved. The impacts of the proposal are not consistent with the principles of ESD, particularly the conservation of biological diversity which requires that ecosystems, species and genetic diversity within species be maintained.
  
- 25 The proposed activity is likely to cause a reduction in the extent and condition of the CCPF EEC within the Park over time by inhibiting key ecological processes across most of the subject site. In particular, there is likely to be ongoing impacts on tree health and continued impairment of the natural regeneration processes needed to replace older trees that are lost or removed for safety reasons due to old age or poor health. Unless ameliorative actions are taken to avoid, mitigate or offset the impacts of the proposed activity, it is likely to result in a decline of ecological function and future local extinction of the EEC.
  
- 26 The submitted arboricultural report, biodiversity assessment report and VMP outline strategies to mitigate the impacts of the activity on the CCPF EEC. The strategies include redefinition of camp sites and walking tracks, installation of ground protection, weed control and assisted regeneration. Further reports were provided in the course of the hearing and are discussed below.
  
- 27 Insufficient information has been provided to demonstrate how the southern precinct could be managed as a camping area concurrently with avoiding environmental damage to the fragments of the CCPF. Even with weed management and protection of individual trees, the community would still be impacted by a number of the listed major threats to the EEC, including (but not limited to):

- (a) risks associated with the community occurring in small, isolated stands exacerbating risks from environmental stochasticity, disruption to pollination and dispersal of fruits and seeds, and likely reductions in genetic diversity;
- (b) trampling and rubbish dumping due to the constant presence of people in the area;
- (c) edge encroachment associated with maintenance of service infrastructure; and
- (d) suppression of natural recruitment/regeneration.

28 The proposed activity poses an unacceptable risk of serious and irreversible damage to the biodiversity values of the Park. The Court would not be satisfied that the proposal is consistent with the principles of ESD, in particular that approval of the Application will ensure conservation of biological diversity and ecological integrity, noting s 89(1)(c) of the LG Act.

29 Section 89(1)(b) of the LG Act provides that in determining an application the council must take into consideration any criteria in a local policy adopted under Pt 3 by the council which are relevant to the subject matter of the application.

30 Section 17 of the Byron Local Approvals Policy provides that any development control plan and council policy (where formally adopted by the Council) are to be included as criteria for the assessment of s 68 Pt F(2) LG Act applications where relevant, unless the activity is exempted under that policy (in this case activities under s 68 Pt F(2) are not exempt).

31 Having regard to the adverse environmental impacts associated with the approval of the Application, the proposal is not consistent with Part E4.3.5 of the BDCP 2014 and should be refused.

### *Public interest*

- 32 The Application should be refused because approval of the Application would not be in the public interest. It has not been demonstrated that approval of the Application would not adversely impact on the EEC present on the site and would be consistent with the principles of ESD.

### *Applicant's contentions in reply*

- 33 The Applicant provided an ASOFAC in reply dated 1 February 2021 (Ex B). The Applicant submitted that appropriate management measures backed up by an adequate VMP can restore the EEC and preserve the remaining existing trees into the future. Leaving the southern precinct vacant will not assist its management for this purpose.

### **Evidence**

#### *Applicant's evidence*

- 34 The Applicant tendered the following:
- (a) a bundle of documents the current POM dated April 2014 and existing VMP dated 21 January 2011, an ecology report on the southern precinct prepared by Kingfisher Urban Ecology and Wetlands dated May 2018, a biodiversity assessment of proposed tree management works prepared by Kingfisher Urban Ecology and Wetlands dated June 2018, an arboricultural impact assessment report prepared by ArborSafe Australia Pty Ltd (ArborSafe) dated 15 January 2021 and several documents relating to tree planting at the Park between 2013 and February 2021 (Ex H);
  - (b) the Class 2 application dated 30 October 2019 which included the Application and supporting documents submitted to the Council on 7 August 2019 (Ex A);

- (c) ASOFAC in reply dated 1 February 2021 (Ex B);
- (d) witness statements made by trust officers Ms Jennifer Scott dated 17 February 2021 (Ex F), 5 March 2021 (Ex G) and Mr Steve Edmonds dated 9 March 2021 (E J);
- (e) site plan version K dated 18 February 2021 (Ex L);
- (f) an updated VMP dated 12 March 2021 (Ex K);
- (g) a document dated 12 March 2021 with Dr David Robertson's (Applicant's ecologist) comments on the updated VMP (Ex M);
- (h) a document addressed to the Council dated 23 April 2021 identifying a number of objections under s 82 of the LG Act to complying with several provisions in the LG Regulations 2005 (Ex N);
- (i) site plan version K2 dated 14 April 2021 (Ex O) which shows 26 camp sites in the southern precinct. Red crosshatching denotes that these 26 camp sites require tree protection. An additional two camp sites are located at the extreme right of the southern precinct but are not identified as being within the area with existing remnants of the CCPF;
- (j) a further revised VMP (VMP K2) dated 26 April 2021 (Ex P); and
- (k) and a document titled "Applicant's conditions in reply" for approval filed 27 April 2021 (Ex Q).

*Council's evidence*

35 The Council tendered the following:

- (a) ASOFAC dated 15 January 2021 (Ex 1);

- (b) a bundle of documents including the Application dated 7 August 2019 and supporting documents, relevant legislative and planning instruments and a copy of the POM dated April 2014 (Ex 2);
- (c) a document titled “draft conditions” filed in Court on 18 May 2021 to allow the activity of “operate a caravan park and camping ground” on the land known as Part Lot 416 DP 728666, Lot 313 DP 755692, Lot 403 DP 728637, Lot 1 DP 1169548 and Lot 50 DP 1169550, The Terrace, Brunswick Heads NSW, except for any part of the activity that would be located on any part of the land that is to the south-west of the precinct boundary line shown on the community map (Ex 3);
- (d) a supplementary bundle of documents dated 2 March 2021 consisting of two community submissions prepared by Brunswick Heads Progress Association (Progress Association) and Foreshore Protection Group Brunswick Heads (Ex 4);
- (e) a photograph dated 4 March 2021 of a tent set up on mulch and a clothesline tied to a tree in the southern precinct of the Park (Ex 8);
- (f) comments on the updated VMP (Ex K) prepared by Mr Damian McCann (Council’s ecologist) dated 19 March 2021 (Ex 5) and by Mr Peter Gray (Council’s arborist) dated 15 March 2021 (Ex 6);
- (g) a document titled “Response to Applicant’s s 82 objections” dated 14 April 2021 and updated on 26 April 2021 (Ex 7); and
- (h) additional comments on the VMP K2 prepared by Mr Gray dated 30 April 2021 (Ex 10) and Mr McCann dated 4 May 2021 (Ex 9).

*Section 68 LG Act application*

36 The s 68 LG Act application consisted of the following documents:

- (a) a three-page activity approval application form dated 7 August 2019. In the section titled “type of activity requiring approval”, it states “refer to Attachment A” for road works/driveway and under “description of development” it states, “operate a caravan park and camping ground”. Attachment A is a lodgement checklist under s 138 of the *Roads Act 1993* (NSW);
- (b) a document of site particulars providing details of the number and types of sites, available facilities and a list of non-compliances with the LG Regulation 2005. The document identifies 25 camp sites within the southern precinct. The approval application was lodged in relation to the following lots;

**Property Description:**

LOT: 313 DP: 755692 The Terrace;

PT LOT: 416 DP: 728666 The Terrace;

LOT: 403 DP: 728637 The Terrace;

Lot: 1 DP: 1169548 The Terrace;

Lot 50: DP: 1169550 The Terrace

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- (c) a Reflections Holiday Parks Terrace Reserve site map illustrating the location of sites, roads, facilities and infrastructure in the northern, central and southern precincts;
- (d) a Reflections Holiday Parks Terrace Reserve visitors’ guidelines; and
- (e) a fire safety certificate dated 23 April 2019.

*Plan of Management 2014 approved by Minister under Crown Lands Act*

37 The POM approved by the Minister under the *Crown Lands Act* was prepared in relation to “Reserve 82999 for Public Recreation and Resting Place”. The

land covered by the POM comprises the following lots: Part Lot 416 DP 728666; Lot 313 in DP 755692; Lot 403 in DP 728637; Lot 50 in DP 1169550; and Lot 1 in DP 1169548.

38 In relation to camping at the park:

### **3.1 Existing Development**

The Holiday Park provides accommodation for tourists and long-term residents and has a total 199 approved sites. The sites and accommodation for tourist use include 12 self-contained cabins, 90 short-term powered sites and 48 camp sites.

...

### **3.2 Vegetation – Terrace Reserve Holiday Park**

...

The Southern Precinct ... contains mostly unpowered sites used for short-term caravan and tent camping.

...

### **6.8 Tourist Sites and Accommodation**

**Objective:** To optimise income to the Holiday Park by providing a range of quality tourist accommodation including opportunities for family and traditional camping within the bounds of ecologically sustainable development and which complement the Brunswick “Simple Pleasures” theme.

...

39 A site plan of the Park attached to the POM April 2014 shows 48 camp sites in the Park. Forty-five camp sites are located within the southern precinct.

### *Expert reports*

40 A joint expert report on town planning filed 18 February 2021 was prepared by Mr Craig Marler (Applicant’s town planner) and Mr Ben Grant (Council’s town planner) (Ex C). The experts agreed that the objectives of biodiversity conservation under Part E4.3.5 of the BDCP 2014 were a relevant consideration for the assessment of the Application.



- 41 A joint expert report on arboricultural issues filed 19 February 2021 was prepared by Mr Alex Austin (Applicant's arborist) and Mr Gray (Council's arborist) (Ex D). The experts agreed on all major points. The Applicant's proposed mitigation measures are generally satisfactory as a result of the adoption by Mr Austin of the approach to risk assessment of dangerous trees preferred by Mr Gray in the future.
- 42 A joint expert report on ecology filed 19 February 2021 was prepared by Dr Robertson (Applicant's ecologist) and Mr McCann (Council's ecologist) (Ex E). The experts agreed that current management operations of the Park are not adhering to the VMP in the 2014 POM. That VMP should be updated and improved.
- 43 The ecological and arboreal evidence evolved during the course of the intermittent hearing over five days. The arborists and ecologists gave concurrent evidence focussed largely on a revised VMP dated 12 March 2021 (Ex K). Mr McCann (Ex 5), Dr Robertson (Ex M) and Mr Gray (Ex 6) also provided written comments on the revised VMP. The VMP was further revised to take into account their evidence called VMP K2 (Ex P). The number of camp sites proposed in the southern precinct is to be reduced to 26 as shown on the community map for that precinct (Ex O). The Applicant proposed that the VMP K2 be imposed as a condition of an activity approval. Mr McCann (Ex 9) and Mr Gray (Ex 10) provided additional comments critical of the VMP K2.
- 44 Mr McCann's final comments (Ex 9) on the VMP K2 included concern about the timing for regeneration in the southern precinct which he considered should be managed in conjunction with adjoining land in Simpson Reserve (also managed by the Applicant), inconsistencies in timing deadlines meaning that action was not taken in the timeframe agreed by the experts, and lack of quantifiable objectives inter alia. Mr Gray's final comments (Ex 10) identified concern with the VMP K2 in not clearly specifying the agreed method of identifying risk from trees and the management of that risk, and in relation to tree replacement and recruitment across the whole Park.

*Further revised vegetation management plan VMP K2 dated 26 April 2021*

- 45 The VMP K2 divides the VMP area in zones which correspond with the Park's management zones, plus an adjacent mangrove zone. Zone 1 is the northern precinct, Zone 2 the central precinct and Zone 3 the southern precinct.
- 46 "Part 5 Management of Coastal Pine Stands" identifies existing tree conditions within the VMP area (section 5.2). The most recent arboricultural assessment assessed the health of 115 existing trees in the southern precinct as good (98), fair (16) or poor (1). In relation to mitigation measures, there is provision for mapping of TPZs and SRZs (section 5.3.1) and an outline of mitigation measures identified by ArborSafe which must be implemented in full (section 5.3.2). These mitigation measures include: permanent ground protection and anchor points for guy ropes at camp site locations; reduce site density; a buffer zone adjacent to mangroves; mulching; defining camp sites to minimise encroachment; installing ground protection measures to minimise soil compaction; avoid fertilisers; and no mowing to be undertaken in Zone 3 except for within limited areas of paths around amenities blocks.
- 47 "Part 6 Revegetation Plan" identifies areas for planting (section 6.2). Approximately 0.75 ha is available for regeneration in the southern precinct. Some patches are available for immediate replanting within the first two years of the VMP. Other areas will be initially fenced and if they do not regenerate naturally then they will also be subject to replanting. Timing is dealt with in section 6.3. The area available for planting is to be fenced (section 6.6.4). An ecologist is to inspect all planted areas after five years to identify if thinning is required (section 6.7.1).
- 48 "Part 7 Monitoring and Reporting" provides for annual arboricultural inspections (section 7.2), a program for revegetation monitoring (section 7.3) with an annual report to be prepared based on the monitoring inspections (section 7.4.2), annual arboricultural assessment reports (section 7.4.1) and independent auditing of the implementation of the VMP by the Council at regular intervals (section 7.4).

- 49 “Part 8 Timing and Responsibilities” includes a table with roles and responsibilities for VMP implementation (section 8.1, Table 3) and a table on timing for VMP implementation (section 8.2, Table 4). A bushland regeneration contractor is responsible for tree protection/fencing which involves implementing tree guards, fencing or other protection measures around plantings within two years of the VMP commencing. The Holiday Park operator is responsible for ensuring no incursions of SRZ and protection of TPZ within two years of the VMP commencing.
- 50 Figure 2 shows the VMP area divided into northern, central and southern precincts. Figure 6 identifies the areas available for planting in Zone 3. A subset of this area is identified as available for initial planting.

*Trust officers’ affidavits and oral evidence*

**Ms Jennifer Scott**

- 51 Ms Scott Operations Manager of Reflections Holiday Parks Terrace Reserve for approximately five years provided a witness statement dated 11 February 2021 (Ex F) outlining the Applicant’s practice of not accepting bookings for certain sites in the southern precinct. Park managers and staff regularly patrol the Park to ensure that guests set up camp within site boundaries. Upon arrival, all guests staying within the southern precinct are provided with information about the Applicant’s commitment to protecting the CCPF. Since 2017 there have been signs in the Park directing guests on what they cannot do, such as not tying ropes to the trees. Additional signs have been ordered and are expected to arrive the week of 15 February 2021.
- 52 Ms Scott provided a second witness statement dated 5 March 2021 (Ex G) addressing the Applicant’s implementation of the 2011 VMP which forms part of the Park’s April 2014 POM. The Applicant is responsible for managing the trees within the Park. On 22 May 2017, the Applicant lodged a request with the Council to remove dead, dying and dangerous trees at the Park. This request was approved on 26 June 2017 but later withdrawn on 28 June 2017. Ms Scott organised in November 2017 for contractors to lay mulch under CCPF trees in

the Park. This was stopped due to community complaints. Between 2013 and 5 March 2021 the Applicant has planted a total of 459 trees across all of the Park, Toorkina Reserve, Simpsons Creek Reserve, Banner Park, Terrace Park, and Ferry Reserve Foreshore. That figure includes 309 trees planted in the Park. Eighty-six trees have been removed across the Park, Toorkina Reserve, Simpsons Creek Reserve, Banner Park, Terrace Park, and Ferry Reserve Foreshore. Twenty-four of those trees were removed from the Park and of those 24, 10 were CCPF. Sites in the southern precinct of the Park have comparatively low occupancy rates.

- 53 Simpsons Creek is a reserve just south of the Park's southern precinct. Simpsons Creek is Crown reserve land managed by the Applicant and mowing is completed by the Council. The Applicant pays the Council approximately \$250,000 per annum to maintain Crown reserve lands (including Simpsons Creek Reserve) that are not holiday parks. Ms Scott understood that the Council has engaged an independent contractor to maintain these Crown reserve lands.
- 54 Ms Scott also gave oral evidence. There is no document that says how often inspections of the Park must occur. Ms Scott stated that inspections of the southern precinct are part of the park managers' day-to-day procedure. Ms Scott was shown a photograph dated 4 March 2021 of a tent set up on mulch and a clothesline tied to a tree in the southern precinct (Ex 8). In re-examination, Ms Scott stated that these guests had checked in after hours. The Park manager had untied the clothesline and moved the tent to the correct position the following morning.
- 55 Ms Scott stated it was a "fair assessment" that the Applicant had not taken its obligation seriously in the 2011 VMP to maintain an up-to-date plan showing the location of CCPF trees and critical root zones. A plan showing the location of existing CCPF trees first came into being in 2013. A plan showing critical root zones was not produced until the hearing of this Application. Ms Scott understood that one of the actions required under the 2011 VMP was to

maintain a collection of seed and seedling plants. The Applicant established a micro-nursery onsite with purchased seedlings in 2017.

56 The 309 trees planted in the Park (see in [52] above) were planted over a six and half to seven-year period. Ms Scott did not have records on how many of those trees had survived. Prior to 2021, records were only started once the trees reached a certain age. In 2017, 50 CCPF trees were planted at the Park in the central and southern precincts. Some of those 50 trees were planted outside of the Park boundary. Ms Scott stated that based on observations, approximately half of those trees had survived. The plantings in 2017 were not assisted by ecological advice. The new plants were planted in and amongst existing CCPF trees. Ms Scott agreed there was no substantial planting between 2017 and 1 February 2021. Trees were planted on 1 February 2021. The Applicant engaged ArborSafe to provide advice on the best location and method for planting. The Applicant removed trees in December 2020 with approval from the Council.

57 From approximately 2017 onwards, the Applicant has done everything it can to minimise impact within the southern precinct. There has been a permanent sign about the CCPF at the entrance to the southern precinct since 2018. There would be a significant economic impact if the Applicant could not use the southern precinct. Ms Scott agreed that there were lower occupancy rates in the southern precinct compared with the northern and central precincts.

**Mr Steve Edmonds**

58 Mr Edmonds CEO of NSW Crown Holidays Parks Land Manager provided a witness statement dated 9 March 2021 (Ex J). Mr Edmonds' statement addressed community submissions from the Progress Association and Foreshore Protection Group (Ex 4) in respect of the Park's previous non-compliances with the 2011 VMP. Mr Edmonds included a record of tree planting and removal from 2013-21, which included records relevant to the Park. Mr Edmonds also gave oral evidence.

- 59 The Applicant cannot fully implement the VMP until the allowable site footprint for camping is known. Mr Edmonds had previously directed staff to engage contractors to lay mulch at the bottom of CCPF in the Park but due to strong community opposition the mulch was removed.
- 60 The Progress Association's submission that "95% of offset trees have died" is "not true". A number of new trees always die and extra trees are planted to allow for that. Mr Edmonds stated in cross-examination that his observations were based on a report by the contractor who planted the trees and Ms Scott's observations.
- 61 Campers do not tie things to trees within the Park as this is prohibited. The statement that this practice continues is incorrect. Mr Edmonds stated in cross-examination that the incident referred to by the Council in Ms Scott's cross-examination (in [54] above) was a one-off and remediated quickly by Park staff. Non-compliances with the Park's policy should be diarised in incident reports.
- 62 The Applicant is operating the Park under the LG Act and CLM Act with conflicting requirements. Mr Edmonds did not agree there has been a decline in the CCPF community since 2014. The Park has reduced the number of sites in the southern precinct in an attempt to ensure there is no damage to the EEC and has planted CCPF trees. Consistent with the 2014 POM the Applicant has appointed ArborSafe to inspect trees and take remedial action as required. The ArborSafe report dated 15 January 2021 (included in Ex H) identified critical root zones of trees. Mr Edmonds stated that other reports prepared for the Park contained ecological advice.

### *Lay evidence*

- 63 Mr Matthew O'Reilly President of the Progress Association gave oral evidence. Mr O'Reilly was co-author of a submission made by the Progress Association (included in Ex 4). The Progress Association has a long history of trying to preserve the CCPF community throughout Brunswick Heads. The continued operation of intensive camping and holiday-making in the southern precinct of the Park is incompatible with the continued viability of the CCPF community.

The two uses are incompatible because mature trees in the area must be cut back or removed to maintain a safe environment for staff and visitors in the southern precinct.

- 64 Cars, camping trailers, caravans, motorhomes and large tents in the southern precinct put unreasonable pressure on the CCPF community. Increased soil compaction and site usage is not compatible with a viable future for the EEC. Other national parks and wildlife campgrounds which operate in high biodiversity areas are for tent camping only and have clearly designated parking areas. The Park does not have clearly designated camp sites for tents only. The southern precinct is currently managed as a large paddock. The CCPF are trimmed up to four metres tall. There is no ability for coexistence under the current proposal.
- 65 Mr O'Reilly agreed that the Progress Association's concerns would be some way addressed if vehicle traffic was stopped from going into the southern precinct. Mr O'Reilly stated the Progress Association was not opposed to the southern precinct being used for tents only within designated areas. Following Mr O'Reilly's oral evidence, an additional written submission was provided by the Progress Association stating that it "does not support partial camping" in the southern precinct "under any circumstances".

### **Objections under LG Act/LG Regulation 2005**

- 66 The Applicant has lodged with the Court a number of objections to being required to comply with several provisions in the LG Regulation 2005 as these are unreasonable or unnecessary, as provided for by s 82(1) of the LG Act (Ex N). The Council has assessed these and considers that non-compliance is acceptable (Ex 7). Ultimately I must be satisfied that the objections are well founded, given the provision in s 82(3) of the LG Act. I note that by virtue of s 39(6) of the LEC Act the lack of concurrence of the Departmental Chief Executive under s 82(3) is not an impediment to the grant of an approval by the Court.

- 67 The first objection concerns reg 88 of the LG Regulation 2005 – setbacks of community buildings. Amenities buildings in the northern, central and southern precincts and the office/residence in the northern precinct do not comply with the setback requirements of reg 88 because each building is less than 10 m from the Park boundaries or from the boundaries of a dwelling site, or both. The buildings can be screened to offer improved separation and privacy for users.
- 68 The second objection concerns reg 89 of the LG Regulation 2005 which requires dwelling sites and camp sites to be no closer than 10 m to a public road or three metres to any other boundary of the caravan park or camping ground. Fifteen short-term sites are within 10 m of the Terrace Road and 16 sites are within three metres of the Park’s western and northern boundaries. The Applicant has proposed five metre minimum setbacks for several sites which face the Terrace Road and a three-metre minimum boundary setback for moveable dwellings. Dwelling sites or camp sites will be provided with appropriate screening and fencing in the Applicant’s proposed conditions and plans.
- 69 The third objection concerns the width of entrance and exit roads to a caravan park or camping ground (reg 92 of the LG Regulation 2005). The Park’s divided entrance road is 4.8 m wide on either side of the median strip, which falls short of the required five metres. The Council considered that requiring the road to be widened by 0.2 m would be onerous and offer negligible benefits.
- 70 The fourth objection concerns width of roads (reg 94 of the LG Regulation 2005). Access roads must be at least six metres wide for a two-way access road and at least four metres wide for a one-way access road. Access roads in the central precinct are predominately 3.5 m wide and one-way access. The two-way access road in the central precinct is predominately 3.5 m wide, 71 m long and services a relatively small number of sites. These road widths have been in place for a long period without incident. Access roads in the southern precinct service camp sites and are 2.5 m wide. The Council considered that the current roads are generally adequate for vehicular travel through the Park. However, the Council is concerned that the 3.5 m wide road through the central



precinct is not wide enough for vehicles to pass each other. The Council suggests variation to the road width standard should be conditional on improved traffic measures for the section of road going through the central precinct as suggested in Appendix A to the Applicant's objections submission (Ex N).

71 The fifth objection concerns reg 93 of the LG Regulation 2005 which requires a caravan park to have a forecourt, measuring at least 4 m x 20 m, to accommodate incoming vehicles. The boom gate is set back more than 20 m from the public road and allows vehicles to access the Park without queuing back onto the public road. The Council submits that constructing a pullover bay or widening the access road, as suggested by the Applicant, would provide the best outcome. Alternatively, a plan to manage incoming vehicles should be prepared.

72 I am satisfied for the purposes of s 89(1)(a) of the LG Act that having reviewed the Council's assessment of the objections that compliance with regs 88, 89, 92, 93 and 94 is not necessary or reasonable and that the non-compliances are acceptable or can be dealt with appropriately in the conditions of consent. There is no reason therefore not to approve the application as it relates to the northern and central precincts of the Park. The Applicant's proposed conditions in reply (Ex Q) deal with the objections as necessary.

### **Additional issues**

#### *Operation of s 3.39 of the CLM Act*

73 Under s 3.39 of the CLM Act a local council (here the Court) cannot grant approval for an activity under Pt 1 of Ch 7 of the LG Act on Crown land which would result in contravention of the POM for that land. A VMP is proposed by the Applicant. The parties made conflicting submissions about how s 3.39 of the CLM Act operates in relation to the s 68 approval application under the LG Act before the Court. The sections are extracted in [5] and [9] above.

74 The Applicant submits that the Court here acting as the Council cannot refuse an activity which would result in a contravention of a POM approved under the

*Crown Lands Act* for the land. The POM approved under the *Crown Lands Act* extracted in [38]-[39] above provides expressly for camping in the southern precinct in sections 3.1, 3.2 and 6.8. It is permissible to approve a lesser intensity of camping in this area, 26 camp sites, compared to the POM, 45 camp sites (see in [39] above), but not to prohibit camping altogether pursuant to s 3.39 of the CLM Act.

- 75 The Council submits to the contrary. The Court is being asked not to approve any activity in the southern precinct and therefore in doing so would not contravene s 3.39 of the CLM Act. It would not be approving all of the activity application. Section 3.39 does not force the granting of an approval, but if approval is granted it must be consistent with the POM. The Court is not obliged to grant approval to activity in the southern precinct.
- 76 If the Court considers it cannot grant a partial application, then the whole Application should be refused as not enough has been done to convince the Court of the consistency with ESD principles, as s 89 of the LG requires.

#### *Section 94 vs s 96 of the LG Act*

- 77 The Applicant submits that the Court is determining to grant an approval under s 94 of the LG Act. It is not open to the Court to approve activity only in the northern and central precincts of the Park.
- 78 The Council submits that s 96 is available and only part of the Application can be granted. Staged approval is not defined nor is staged application. There is no reason not to apply s 96 in granting approval to activity in the northern and central precincts only.
- 79 As I discuss next, I consider on a merits assessment that an approval ought to be granted subject to conditions including compliance with a VMP. It is therefore strictly unnecessary to resolve the above matters. My view nevertheless is that as s 3.39 of the CLM Act applies, the purpose of the use of the Park as a whole is as a caravan park and camping ground. The POM extracted in [38]-[39] above does provide that the southern precinct is used for camping. Granting an

approval which does not include that activity in the southern precinct does potentially give rise to an impermissible conflict. Further, this Application is not a staged application for the purposes of s 96 of the LG Act as the Applicant relies on s 94 and there is no basis for concluding otherwise given the Application before the Court.

### **Use of southern precinct for camping can be consistent with ESD principles**

#### *Applicant's submissions*

80 The powers of the Court to approve an application under s 68 are identified in s 94 of the LG Act. Section 89(1) specifies what must be considered in doing so. Subsection (1) is satisfied. Subsection (3) in relation to public interest considerations requires consideration of environmental protection, public health inter alia. No issues concerning these considerations are identified. At issue is subs (2)(a) concerning the application of ESD principles, defined in the Dictionary. Management of the southern precinct as a camping ground can be modified in such a way that the CCPF can be regenerated and the existing CCPF trees protected. The revised VMP K2 dated 26 April 2021 (Ex P) provides an adequate means of managing the southern precinct in compliance with ESD principles. The Court can be satisfied that there would not be serious or irreversible harm to the CCPF EEC if the approval is granted with appropriate conditions. There are existing trees on the site, the number of sites for camping has been reduced, protective mesh will be applied on the ground as shown in Fig 6 of VMP K2 to protect root zones, vacant areas are to be fenced off within two years of approval and mowing will end in regeneration areas.

81 Both planting and recruitment through regeneration are proposed. There is necessarily some flexibility in timing. The existing trees are in good health according to Mr Austin and the current activity is not interfering with their health. The VMP K2 will ensure existing stands of trees are adequately protected. The VMP K2 applies to the whole of the site and provides for control of exotic weeds. Auditing by the Park operator is provided for in section 7.4 of the VMP K2 and by the Council in section 7.5.

- 82 The ecologists identify that the 2014 POM has not been complied with in relation to the VMP then approved. Mr Edmonds' evidence identifies that the Applicant has been making a much bigger effort with trees planted since 2013. There is no record kept of what has survived. *Jonah Pty Limited v Pittwater Council* (2006) 144 LGERA 48; [2006] NSWLEC 99 confirms that past conduct is not a guide to future compliance.
- 83 An ecologist is involved in the implementation of the VMP K2, identified in Table 3 in Part 8. Dr Robertson drafted the VMP K2. The VMP K2 can be practically implemented. To the extent there is discrepancy in timeframes, it is intended that the shorter periods in Table 4 in Part 8 apply. The VMP K2 can be amended or a condition of approval can state that.
- 84 Mr McCann's concerns that protection of the ESD requires work to be done off site is not able to be implemented in this approval process which relates to the areas the subject of the Application, namely the Park.

#### *Council's submissions*

- 85 The Application should be refused. The continued use of the southern precinct as a camping ground will result in unacceptable serious harm to the CCPF EEC and should be refused. The VMP K2 is still inadequate and its implementation will not ensure the integrity of the CCPF EEC. The 2014 VMP has not been complied with, as both ecologists agreed. Therefore a clear VMP is needed so that the responsibilities under it are apparent. The VMP K2 is internally inconsistent as timeframes differ at between Table 4 in Part 8 and elsewhere. For example, Table 4 states in relation to closure of camp sites that it should be done immediately whereas in section 6.3 the number of camp sites is to be reduced within two years. The time allowed for in Table 4 to identify additional planting areas is not acceptable since 0.75 hectares is already identified in Fig 6 as available for planting. The VMP needs another rewrite before it is finalised as it must be prescriptive. It requires a major rewrite not just minor amendments.

- 86 There is a fundamental incompatibility with the EEC and continued operations of a campground in the southern precinct. Mr McCann's approval is also conditional on work occurring off site in Simpsons Reserve which is controlled by the Applicant. The Applicant could have offered to do this regardless but has not.
- 87 The main deficiencies in the VMP K2 (Ex P) that Mr McCann continues to be concerned about are as follows. Works are needed within the adjacent Simpson's Creek reserve to maintain the CCPF. The last paragraph in section 5.3.1 says that CCPF stands "can be" planted and "can be" progressively thinned. This is inconsistent with conservation of the CCPF. Immediate fencing is missing from the list of mitigation measures in section 5.3.2. Mulching in section 5.3.2 should not occur in areas identified as capable of regeneration as it will suppress seedling recruitment. Section 6.2 identifies 0.75 hectares available for regeneration, however it is not clear that the full 0.75 hectares will be restored. Figure 6 should be updated to note that the area in green is available for ecological restoration. The timing in section 6.3 allowing for five years to fence off the 0.75 hectares available for planting is unacceptable. The experts had agreed that fencing would occur immediately. The Council also submitted that there is no mention in Table 4 in Part 8 of timing for fencing of areas of natural regeneration. A person picking up this VMP K2 would be unaware of the fencing requirement. In relation to section 6.4, Mr McCann stated that temporary fencing is inadequate – restoration areas must be permanently protected. The thinning referred to in section 6.7.1 should occur in comparison with the benchmarks for this plant community type, not if density is more than one stem per 2m<sup>2</sup>. The monitoring method in section 7.3 is qualitative rather than by reference to objective benchmarks such as comparison with the plant community type. Monitoring reports per section 7.4.2 should include parameters which confirm that the ecological processes are occurring and are not confined to recording plantings.
- 88 Mr Gray identified deficiencies which are largely uncontroversial and should be inserted in the VMP. An objective methodology should be used for assessing risk in all three zones of the VMP area. The inconsistency between sections

reducing the number of camp sites should be rectified. It was agreed the number of camp sites would be reduced immediately. Mr Gray was concerned about the discretionary thinning of stands of the CCPF in section 6.7.1. In Table 4 of Part 8 the timing of tree protection measures should be immediate, not “within two years”. The application of mulch in section 6.6.1 should be 75-100 mm not “at least 75 mm”.

## **Consideration**

- 89 Under s 89(1) or (2) of the LG Act the Court must not approve an application under Ch 7 unless satisfied of the specified matters. Matters relevant to the consideration of the public interest are set out in subs (3). The only issue remaining is whether the Application as now proposed is consistent with the principles of ESD, referred to in subs (1)(c). In relation to subs (1)(b), while Part E4.3.5 of the BDCP 2014 and section 17 of the Byron Local Approvals Policy are referred to in the ASOFAC, no particular reliance was placed on them. The issue of biodiversity conservation is incorporated into the ESD principles, as defined in the LG Act (see in [5] above). A related issue is subs (2)(b) of giving effect to an applicant’s objectives to the extent they are compatible with the public interest. The southern precinct is part of the Park reserved for use as a caravan park and camping ground under the CLM Act and its predecessor. It has been used for that purpose by members of the public for decades, a component of the public interest. A community map is required to be part of the application under reg 72(2) of the LG Regulation 2005 on which the numbers, sizes and locations of long-term, short-term and dwelling sites for a caravan park, and the same information for camp sites, must be shown inter alia. The community plan proposed is site plan version K2 (Ex O).
- 90 I agree with the Applicant that the fact that it has not complied with the 2014 VMP is not a reason not to approve this Application. Mr Edmonds and Ms Scott’s evidence refers to some management changes aimed at improving vegetation in the Park in recent years. There is clearly room for improvement in the southern precinct to achieve the conservation of biological diversity through the enhancement of the CCPF EEC.

- 91 As identified by the ecologists in the ASOFAC for management of the CCPF EEC and as was abundantly clear on the view, there is very little intact EEC in the southern precinct. Virtually no understorey exists. There are a number of mature cypress pine trees. In asking whether the proposed activity is likely to have a serious and irreversible adverse impact on the CCPF EEC, the existing vegetation is a highly impoverished version of the EEC. The current approach to management has largely focussed on tree health from a human safety perspective and, due to extensive mowing, the understorey component of the EEC has never been established. Certainly business as usual on the site will continue to have an adverse and likely irreversible impact on what is left of the CCPF EEC.
- 92 In the course of the hearing a VMP has been proposed and refined substantially. I consider that the VMP K2 (Ex P) with further modification as set out below, if implemented, can achieve substantial improvement of the CCPF EEC with the aim being to restore all components of the EEC in the southern precinct. The substantial reduction in camp sites to 26 from 45, exclusion of areas to be planted or allowed to regenerate from human activity by fencing, no mowing in the areas to be restored and protection of root zones are achievable measures. Active involvement of an ecologist, which has been lacking in on-the-ground management decisions made by the Applicant to date, is incorporated in the VMP K2. Records of the survival rate of trees planted will be kept, an improvement on the existing situation where none is kept. Auditing of compliance including through reporting to the Council is provided for in section 7.4. Consistency with the principles of ESD can be achieved through this management approach.
- 93 As identified in Mr McCann's and Mr Gray's additional comments in Exs 9 and 10, some changes to the VMP K2 are still necessary in their view. While Mr McCann considers the VMP K2 to still be inadequate and the Council so submitted, that is in large part because it does not relate to areas outside the Park also controlled by the Applicant. I am not able to consider that land as it is not part of this application. Several of the issues raised by Mr McCann can be incorporated into the VMP K2 as follows:

- (a) Clarification of the wording in section 5.3.1 third paragraph (p 24) to identify circumstances in which thinning may be necessary from an ecological perspective, not as required to meet management requirements.
- (b) Specify in the text fencing obligations around areas set aside for regeneration in Fig 6.
- (c) Section 5.3.2 must specify that no mulching is to occur in areas to be regenerated.
- (d) Figure 6 must specify areas to be regenerated, to be distinguished from planted.
- (e) Timing inconsistencies with the text in, for example, section 6.3 (p 29) referring to five years need to be consistent with the timetable in Table 4, that table specifying the appropriate time periods.
- (f) The thinning benchmark in section 6.7.1 (p 31) must not be an arbitrary 2 m<sup>2</sup> but compared with the benchmark for this plant community type for CCPF.
- (g) Immediate fencing of the area of 0.75 ha in Fig 6 to be reserved for planting and natural regeneration should be included in Table 4.
- (h) Quantitative measures referring to the benchmarks for this plant community type should be included in the auditing measures in section 7.3 and in the monitoring reports in section 7.4.2.

94 Given that the arborists agreed on the appropriate risk and hazard approach to be adopted in relation to tree management, Mr Gray's criticisms in Ex 10 should also be incorporated in the VMP K2.



- 95 The revised VMP K2 should also refer to the most up-to-date version of site plan version K2 which I understand is the community map version K2 (Ex O).
- 96 Once these changes are made satisfactorily I will grant approval to the s 68 LG Act application in accordance with the conditions proposed by the Applicant in Ex Q, amended as necessary to refer to the revised VMP K2 and the community map.
- 97 A short period to enable amendment of the VMP K2 as required above will be provided and then final orders can be made in the terms outlined above.

\*\*\*\*\*

I CERTIFY THAT THIS AND THE 40 PRECEDING PAGES ARE A TRUE COPY OF THE REASONS FOR THE JUDGMENT OF THE HONOURABLE JUSTICE N. H. M. PAIN.



Associate  
Date **25 May 2021**

#### **Addendum made on 28 July 2021**

- 98 Further to [93]-[97] of my judgment of 25 May 2021, it is noted that the Applicant tendered a final VMP titled “Reflections Caravan Park – Terrace Reserve, Brunswick Heads Vegetation Management Plan” prepared by Cumberland Ecology dated 19 July 2021 (Final V7) which is marked Ex R in the proceedings.
- 99 I make orders as follows:
- (1) Approval is granted to application 88.2019.2.1 lodged with the Respondent on 7 August 2019 pursuant to s 68 of the *Local Government Act 1993* subject to the conditions in **Annexure A**.
  - (2) The exhibits are returned.

## ANNEXURE A

### CONDITIONS OF APPROVAL (TO BE COMPLIED WITH FROM THE DATE OF OPERATION OF THE APPROVAL)

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#### GENERAL

#### DEFINITIONS

Definition of terms used in these conditions:

**Camp site** means an area of land designated as a camp site on the community map.

**Community Map** means the series of three (3) plans prepared by ADW JOHNSON each titled "Reflections Holiday Parks and Terrace Reserve Site Plan" dwg ref: 239624-PSK-005-K2 dated 14/04/2021 attached as **Annexure A to these conditions**.

**Long-term site** means an area of land designated as a long-term site on the community map.

**Short-term site** means an area of land designated as a short-term site on the community map.

**Vegetation Management Plan (VMP)** means the document titled "Reflections Caravan Park - Terrace Reserve, Brunswick Heads Vegetation Management Plan" prepared by Cumberland Ecology (Report No. 21005RP2) dated 19 July 2021 (Final V7)

1. Subject to the conditions that follow, approval is granted to NSW Crown Holiday Parks Land Manager trading as Reflections Holiday Park Terrace Reserve to allow the activity of operate a caravan park and a camping ground as specified in item 2 of Part F of the Table in Section 68 of the Local Government Act 1993 on the land known as Part Lot 416 DP 728666, Lot 313 DP 755692, Lot 403 DP 728637, Lot 1 DP 1169548, and Lot 50 DP 1169550, The Terrace, Brunswick Heads NSW.
2. This Approval is for a total of **[25]** long-term sites and **[107]** short-term sites and **[33]** campsites. The number, size and location of the sites allowed by this approval is shown on the Community Map. The sites are specifically identified as follows:
  - **Twenty five (25) long-term sites**, all with private shower and toilet facilities, being sites numbered: LT-74, LT-75, LT-77, LT-78, LT-79, LT-81, LT-82, LT-83, LT-85, LT-86, LT-87, LT-88, LT-89, LT-S92, LT-118, LT-119, LT-122, LT-124, LT-125, LT-126, LT-127, LT-129, LT-130, LT-111, LT-105.
  - **One-hundred and seven (107) short-term sites, being sites numbered:** ST-P143, ST-S142, ST-P141, ST-S140, ST-P139, ST-P138, ST-P137, ST-W136, ST-W135, ST-W134, ST-W133, ST-W132, ST-W131, ST-P101, ST-P102, ST-P103, ST-P104, ST-P106, ST-P107, ST-P108, ST-P109, ST-P110, ST-P112, ST-P113, ST-P114, ST-P115, ST-P116, ST-P117, ST-P117B, ST-P117A, ST-P123, ST-W121, ST-S120, ST-P93, ST-P84, ST-S61, ST-P62, ST-P63, , ST-S64, ST-P65, ST-P66, ST-S67, ST-S68, ST-P68A, ST-S69, ST-P70, ST-P71, ST-P72, ST-P73, ST-P57, ST-P56, ST-P55, ST-P54, ST-P60, ST-P58, ST-P53, ST-P45, ST-P46, ST-P47, ST-P48, ST-P43, ST-P44, ST-P53A, ST-P52, ST-C1, ST-C2, ST-C3, ST-C4, ST-C5, ST-C6, ST-C7, ST-C9, ST-C8, ST-C10, ST-P42, ST-P41, ST-

P40, ST-P39, ST-P38, ST-P37, ST-P37, ST-P36, ST-P35, ST-P34, ST-P33, ST-P11, ST-S12, ST-P13, ST-P14, ST-P15, ST-P15, ST-P17, ST-P18, ST-P19, ST-P20, ST-P21, ST-W10, ST-W09, ST-W08, ST-W07, ST-W06, ST-W05, ST-W04, ST-W03, ST-W02, ST-W01

- **Thirty-three camp sites**, being sites numbered: C154, C153, C152, C151, C150, C149, C148, C147, C146, C145, C144, C156, C157, C155, C158, C159, C160, C161, C162, C163, C164, C165, C166, C167, C168, C169, C143A, C100, C99, C97, C96, C95, C94. The camping ground is not a primitive camping ground.

3. The sites, amenities and facilities provided within and for the approved caravan park and camping ground must accord at all times with what is shown on the Community Map.
4. The following sets out the approved facilities:

#### **FACILITIES PROVIDED FOR:**

##### Toilets

Female	16
Male	11
Urinals	7
Unisex Disabled	2

##### Showers

Female	11
Male	11
Unisex Disabled	2

##### Hand basins

Female	10
Male	10
Unisex Disabled	2

##### Laundry

Washing Machines	6
Washing Tubs	4
Clothes Dryers	6
Line Space	340 metres
Ironing Facilities	4

#### **SPECIAL CONDITIONS**

5. The Vegetation Management Plan must be implemented and adhered to at all times. All ecological restoration and maintenance works identified in the Vegetation Management Plan are to be undertaken in accordance with the requirements and timing specified in the Vegetation Management Plan for the life of this approval. Monitoring reports must be prepared and submitted to Council in accordance with the monitoring requirements of the Vegetation Management Plan for the life of this approval.
6. A compliance audit report prepared by an individual with acceptable qualifications in structural maintenance and building operations (including fire safety), of the structures on the long term sites must be submitted to the Council within 90 days of the date of this approval. That compliance audit report is to be approved by Council. This audit must identify repair works

required to structures on long-term sites to improve structural stability, fire separation and health and amenity as per the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. All improvements and works identified in the compliance audit report and scheduling works program must be completed within 180 days from the date of approval by Council of the compliance audit report.

7. Despite any other condition in this Approval, the dwellings located on long-term sites numbered LT-78 and LT-79 are permitted to remain in their current position (approximately 1m from each other), subject to the following requirements:
  - (a) Compliance with any recommendations addressing fire safety requirements identified in the compliance audit report approved by Council pursuant to Condition 6.
8. Sites numbered ST-P101, ST-P102, ST-P103, ST-P104, LT-105 and ST-P106, are to be setback from The Terrace road reserve by at least 5 metres and shall be, appropriately screened and landscaped in accordance with the approved site plan to the satisfaction of Council. Plantings must comprise native species endemic to the local area and have sufficient height and density to function as visual screen between the holiday park and the public road reserve.
9. Screen fencing to a height of 1.8m is to be constructed along the boundaries of the holiday park between sites C100, C99, C97, C96, C95, C94 and ST-P93, LT-S92, LT-P87, LT-86, LT-85, ST-P84, ST-S83 as indicated on the Community Plan. Such fencing and/or screening works are to be installed to the satisfaction of Council within 180 days of the date of approval.
10. The northern, central and southern amenities buildings are to be properly screened with landscaping or other appropriate privacy screening treatments in accordance with the Community Plan. Any such screening treatments shall be constructed, planted or installed to the satisfaction of Council within 180 days from the date of approval.
11. The applicant is to submit a traffic management plan to Council within 90 days of the date of approval identifying strategies to deal with vehicle access and queuing during peak visitation periods. Options could include allocated check-in times, traffic control at the entrance to the holiday park and/or reserve car parking. The traffic approved management plan shall be implemented and adhered to at all times.
12. The traffic management measures identified in the Community Plan, including signage, changes to direction of travel and road realignments must be implemented to the satisfaction of Council within 180 days of the date of approval.
13. An annual tree inspection (during the course of this Approval) is to be undertaken on the site by an arborist, qualified to a minimum of AQF level 5 in Arboriculture. The inspection is to ensure compliance with this Approval, including compliance with the requirements of the Vegetation Management Plan. A report is to be submitted to Council which outlines the findings of this annual inspection within 30 days of the inspection.

## **STANDARD CONDITIONS**

The following standard conditions must be complied with unless there is an exemption in force with respect to the requirement set out in the condition:

14. This Approval shall be prominently displayed on a part of the approved premises where all residents may see it. A copy of the Community Map and all park rules shall accompany any such display.
15. Access shall be permitted at all reasonable hours to authorised council officers for the inspection and review of conditions under this Approval.

16. The operation of the caravan park and camping ground and any work associated with its operation must comply with any applicable standards established by the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

#### **THE FOLLOWING CONDITIONS TO BE SATISFIED AT ALL TIMES**

17. As required by Clause 85 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation, 2005, the following minimum site areas are required to be maintained:
- (a) A long-term site must have an area of at least 80 square metres.
  - (b) A short-term site must have an area of at least 65 square metres.
  - (c) A camp site must have an area of at least:
    - (i) 40 square metres, in the case of a camp site for which a separate parking space is provided within 30 metres of the camp site; or
    - (ii) 50 square metres, in any other case.
18. Each dwelling site or camp site must be numbered or identified and its site boundaries clearly delineated. Site identification must be conspicuous as required by Clause 86 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.
19. Setbacks for relocatable homes, tents, caravans and associated structures and annexes are to be provided as required by Clause 138 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. A relocatable home and any associated structure must not be located:
- (a) closer than one metre to an access road; or
  - (b) closer than 2 metres to the boundary of the caravan park.
20. Moveable dwellings must not be installed closer to any other moveable dwelling than –
- (a) 3 metres, if it is situated on a long-term site; or
  - (b) 2.5 metres, if it is situated on a short-term site or camp site
- as required by Clause 91 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.
21. A minimum of nine (9) visitor parking spaces is required in accordance with Clause 97 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. This has been based on the whichever figure is the greater of:
- (a) one visitor parking space for each 10 (and any remaining fraction of 10) long-term sites in the caravan park or camping ground; or
  - (b) one visitor parking space for each 20 (and any remaining fraction of 20) short-term sites in the caravan park or camping ground; or
  - (c) one visitor parking space for each 40 (and any remaining fraction of 40) camp sites in the caravan park or camping ground.
22. At least two (2) visitor parking spaces for people with disabilities must be provided, as required by Clause 98 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. Such parking must be provided in accordance with AS 2890.1:2004 Parking facilities–Off street parking. All visitor parking spaces for people with disabilities must be clearly identified as such.

23. Between sunset and sunrise all access roads must be adequately lit as required by Clause 100 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.
24. The water supply service must comply with the Plumbing and Drainage Code of Practice and the requirements of any relevant statutory body. Clause 101 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 also requires that:
  - (a) Each dwelling site be connected to the water supply; and
  - (b) Water supply connections (which includes a standpipe and hose tap) for the camp sites shall be supplied at the rate of one connection for every 4 camp sites and located so that no camp site is more than 30 metres from a connection.
25. Each long-term site must be provided with a connection to the sewage disposal system in accordance with Clause 102 (2) of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.
26. A caravan park or camping ground that includes any short-term sites or camp sites must be provided with at least one common soil waste dump point for the disposal of closet waste from caravan holding tanks and the like. The common soil waste dump point must be located so as to permit adequate access by caravans and campervans as required by Clause 102 (3) of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.
27. A short-term site must be provided with a disposal point for the disposal of sullage (that is, domestic waste from baths, basins, showers, laundries and kitchens, including floor wastes from those sources) from any moveable dwelling installed on the site as required by Clause 102 (4) of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. More than one short-term site may be provided with the same disposal point.
28. As required by Clause 102 (5) of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 the sewage disposal system must comply with:
  - (a) the Plumbing and Drainage Code of Practice; and
  - (b) the requirements of any relevant statutory body.
29. The caravan park and camping ground must be provided with a stormwater drainage system as required by Clause 103 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. All dwelling sites and camp sites must be adequately drained.
30. A dwelling site must be supplied with electricity from a reticulated electricity service in accordance with Clause 104 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation, 2005. In the case of a long-term site, the electricity must be supplied by means of an electrical circuit connected to a separate electricity meter.

Any such electrical circuit must be installed in accordance with the requirements of:

- (a) The Electricity Code of Practice, in the case of a long-term site; and
- (b) AS 3001, in the case of a short-term site.

If a dwelling site is provided with electricity otherwise than by way of direct connection to the local

electricity supply authority's electricity main, electricity must be supplied at a rate no greater than the electricity supply authority's domestic tariff.

31. Hot and cold water is to be supplied to each hand basin as required by Clause 109 (1) of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.
32. Each hand basin or pair of hand basins is to be supplied with a mirror as required by Clause 109 (2) of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.
33. At least 2 metres of line space must be provided for each dwelling site in accordance with Clause 116 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. This requires at least 352 metres of line space to be provided for 176 sites within the caravan park and camping ground.
34. The owner/operator must make its register of occupiers available for inspection by any authorised officer without cost during normal working hours, as required by Clause 122 (5) of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.
35. A caravan park or camping ground must not be used:
  - (a) for any commercial purpose other than a caravan park or camping ground or an associated purpose, or
  - (b) for the manufacture, construction or reconstruction of moveable dwellings, as required by Clause 124 (1) of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.
36. Arrangements shall be instituted for the removal of garbage and the for the maintenance of garbage receptacles in a clean and sanitary condition as required by Clause 127 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.
37. All fire hydrants located on the property to be tested and a certificate in relation to each of the fire hydrants, to be provided to Council once every calendar year. Fire hydrant location and design must comply with Clause 128 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.
38. Fire hydrants are to be provided and maintained in accordance with Clause 128 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. No part of a dwelling site, camp site or community building may be situated more than 90 metres from a fire hydrant. Any fire hydrant located within a caravan park or camping ground must be a double-headed pillar type fire hydrant and be maintained in full operational condition to Council's satisfaction.
39. Fire hose reels must be installed so that a fire hose can reach each site in the caravan park or camping ground. The fire hose reels must be constructed in accordance with AS 1221 and installed in accordance with AS 2441, as required by Clause 129 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.
40. The Council is to be provided with a fire hose reel and fire hydrant certificate in relation to each of the fire hose reel and fire hydrant once every calendar year. An appropriately qualified and experienced person stating that these essential fire services satisfy the minimum delivery water pressure and standards as set down in the relevant Australian Standard must provide certification.

41. If a fire hose reel is newly installed, the certificate must be provided within 7 days of the completion of its installation.

A fire hose reel certificate is to state:

- (a) that the fire hose reel has been inspected and tested by a person who is properly qualified to carry out such an inspection and test, and
- (b) that, as at the date on which the fire hose reel was inspected and tested, the fire hose reel was found to have been capable of performing to a standard not less than that required by the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.
- (c) that all dwellings and relocatable homes have smoke alarms that comply with the provisions of the Environmental Planning and Assessment (Smoke Alarms) Regulation 2006.

### **SCHEDULE OF ESSENTIAL SERVICES**

<b>Essential Fire or Other Safety Measures</b>	<b>Design Standard</b>	<b>Installation Standard</b>	<b>Maintenance Standard</b>
Hose Reel Systems	AS 1221 Fire Hose Reels	AS 2441 Installation of Fire Hose Reels	AS 1851.2 Maintenance of Fire Protection Equipment - Fire Hose Reels
Portable Fire Extinguishers	AS 1841.2 Portable Fire Extinguishers - water type AS 1841.3 Portable Fire Extinguishers - wet chemical type AS 1841.4 Portable Fire Extinguishers - foam type AS 1841.5 Portable Fire Extinguishers - powder type AS 1841.6 Portable Fire Extinguishers - carbon dioxide type AS 1841.7 Portable Fire Extinguishers - vaporizing liquid type	AS 2444	AS 1851.1 - Maintenance of Fire Protection Equipment - Portable Fire Extinguishers
Fire Blankets	AS 3501 Fire Blankets	AS 3501	AS 3501
Fire Hydrants	AS 2419.1 Fire Hydrants	AS 1851.1	AS 1851.4 Maintenance of Fire Protection Equipment – Fire Hydrants
Smoke Alarms: (Residence and relocatable homes only)	AS 3786 – Smoke Alarms		AS 1851 – 2012 Routine service of fire protection systems and equipment

42. No more than one relocatable home may be installed on a single dwelling site in accordance with Clause 137 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.



43. Site coverage must be in accordance with Clause 139 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. Clause 139 requires that a relocatable home and any associated structure must not be installed on a single dwelling site if the floor plan area of the relocatable home (together with any associated structure or other building or structure on the site) is more than two-thirds of the area of the site.

For the purposes of this condition:

- (a) the floor plan area of a relocatable home is the area of the dwelling site occupied by the home, excluding the area of any associated structure forming part of the home that is not roofed; and
  - (b) the floor area of any associated structure not forming part of the relocatable home is the area of the dwelling site occupied by the structure, excluding any area that is not roofed; and
  - (c) if there is no carport or garage on the dwelling site, an area of 18 square metres must be added to the floor plan area of the relocatable home to account for the car parking space that is required by Clause 139 sub clause (3) to be provided on the site. An area with minimum dimensions of 6 metres by 3 metres accessible from an access road and useable for car parking must be provided.
44. Each caravan situated on flood-labile land must maintain the wheels, axles and tow bar in working order as required by Clause 165 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.
45. Every rigid annexe must be certified by a practicing structural engineer to be structurally sound as required by Clause 166 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

The certificate must:

- (a) indicate that the rigid annexe complies with any applicable standards, codes and specifications, and
  - (b) include specifications relating to the installation of the rigid annexe and the nature of the footings (if any). Any specifications with respect to footings or tie-down systems must have regard to the design gust wind speed, soil type and other design considerations applicable to the various locations in which the annexe may be installed.
46. In accordance with Clause 167 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005, each rigid annexe must be designed and constructed in accordance with Parts 1 and 2 of AS 1170, except that the design gust wind speed referred to in Clause 3.2 of Part 2 of that Standard is not to be less than 41 metres per second.
47. Each caravan that is installed on a long-term site for more than 150 days and holiday van/park van that is installed on a dwelling site must be restrained in accordance a practicing structural engineer specifications to withstand the wind forces as required applicable to the terrain category in which the dwelling site is located, as required by Clause 171 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

## REASONS

1. To ensure compliance with the Local Government Act 1993; Local Government (General) Regulation 2005 and Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.
2. To protect the environment.

3. To promote the principles of ecologically sustainable development.
4. To protect public health.
5. To protect public safety and convenience.
6. To ensure adequate fire protection measures.
7. To protect occupational health and safety.
8. To ensure compliance with the principles under the Disability Discrimination Act 1992 and ensure fair and reasonable access.
9. To protect cultural and heritage values.
10. To protect biodiversity and habitat for native flora and fauna.
11. To ensure preparation for threats from coastal processes, flooding and other extreme climatic events.

# ANNEXURE A (1/3)

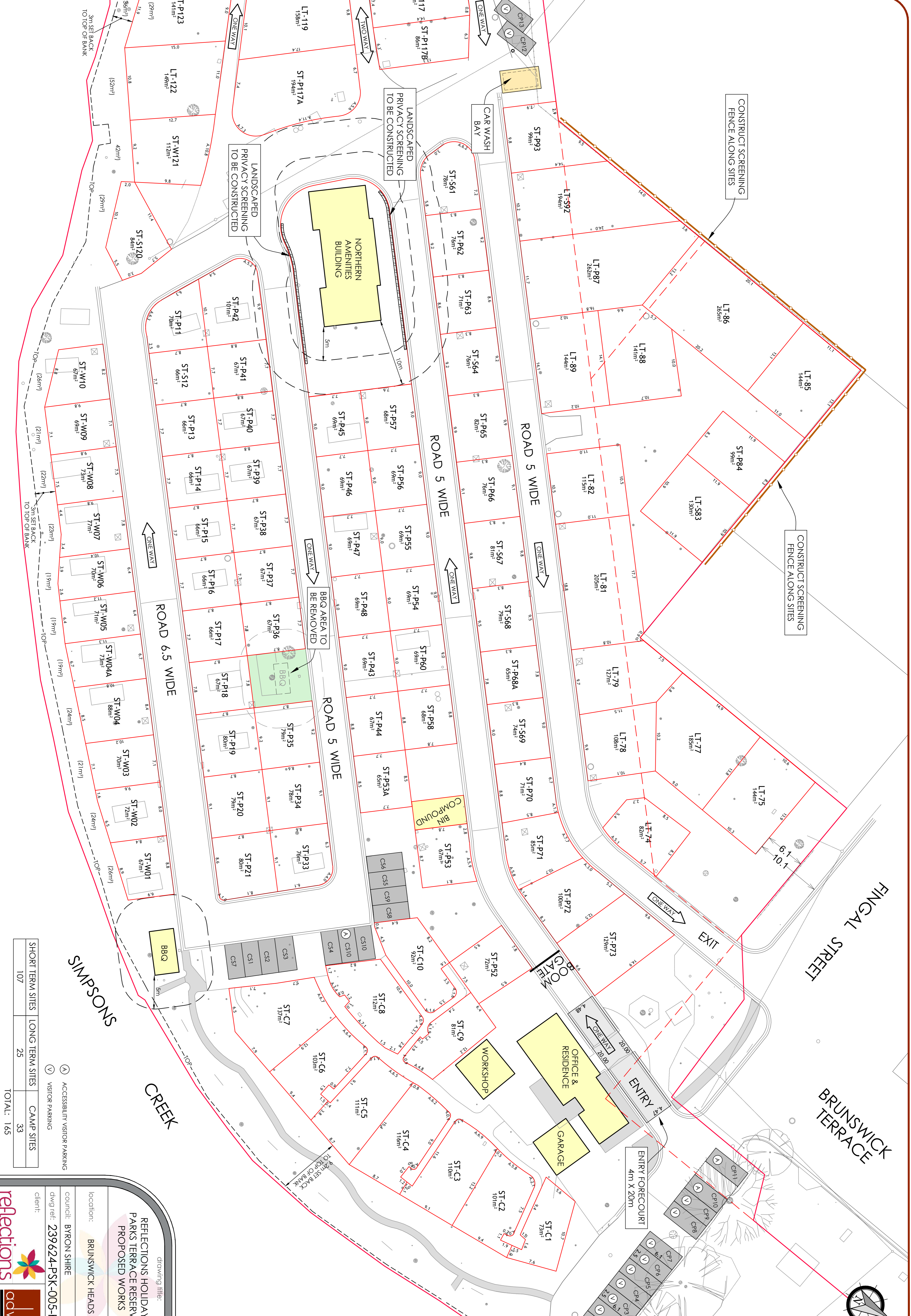
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239624-PSK-005-K2

This plan includes coloured information. If you have a black and white copy you do not have all of the information. This note is coloured RED.

- project management
- civil engineering
- infrastructure
- superintendency
- economic analysis
- social impact
- town planning
- surveying
- development feasibility
- visualisation
- urban design

Ver.	date	comment	drawn	pm	level information	scale	notes
K2	14/04/2021	UPDATE PLAN TO COMMENTS	RC	BS	DATUM: N/A CONTOUR INTERVAL: N/A	Scale (A1 original size) 0 50 100 125m SCALE: 1:250 (FULL)	



SHORT TERM SITES	LONG TERM SITES	CAMP SITES
107	25	33
TOTAL: 165		

- ⊙ ACCESSIBILITY VISITOR PARKING
- ⊙ VISITOR PARKING

drawing title:

**REFLECTIONS HOLIDAY PARKS TERRACE RESERVE PROPOSED WORKS**

location: BRUNSWICK HEADS

council: BYRON SHIRE

dwg ref: 239624-PSK-005-K2

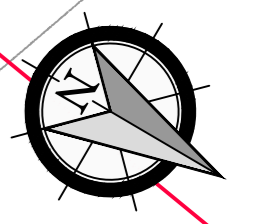
client:

reflections  
HOLIDAY PARKS

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- project management
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- development feasibility
- visualisation
- urban design

Ver.	date	comment	drawn	pm	level information	scale (A1 original size)	notes
K2	14/04/2021	UPDATE PLAN TO COMMENTS	RC	BS	DATUM: N/A CONTOUR INTERVAL: N/A	0 50 100 125m SCALE 1:250 (FULL)	



SIMPSONS CREEK

drawing title:  
**REFLECTIONS HOLIDAY PARKS TERRACE RESERVE SITE PLAN**

location: BRUNSWICK HEADS

council: BYRON SHIRE

dwg ref: 239624-PSK-005-K2

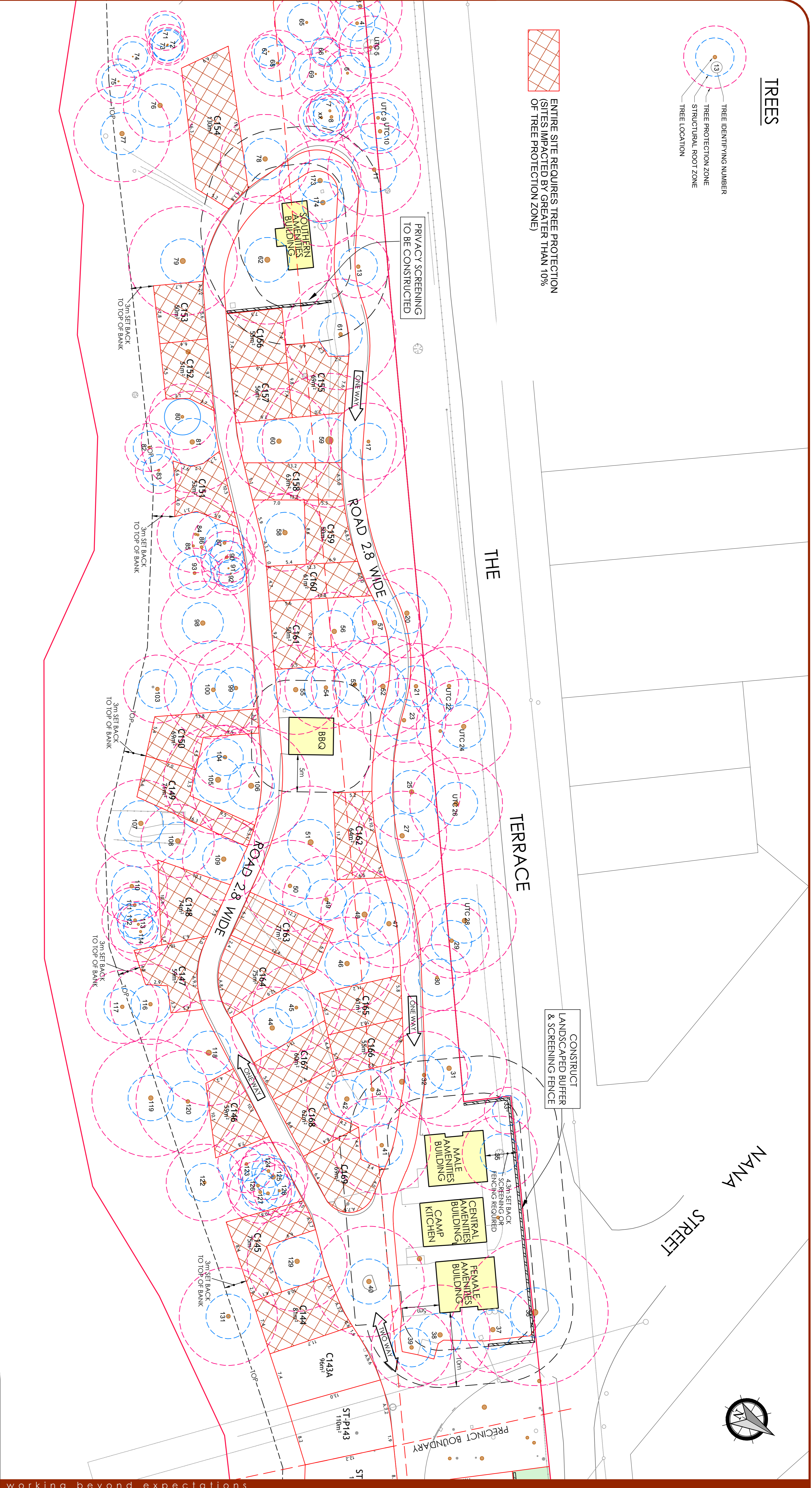
client:

**reflections** HOLIDAY PARKS  
central coast office ph: (02) 4305 4300  
hunter office ph: (02) 4975 5100  
sydney office ph: (02) 8044 7411

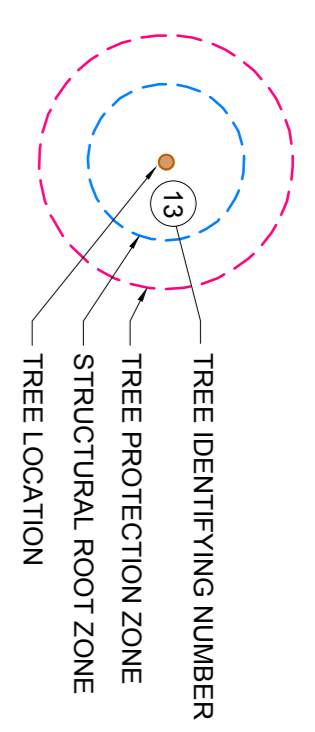
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## TREES



ENTIRE SITE REQUIRES TREE PROTECTION (SITES IMPACTED BY GREATER THAN 10% OF TREE PROTECTION ZONE)

CONSTRUCT LANDSCAPED BUFFER & SCREENING FENCE

THE

TERRACE

MANANA STREET

SIMPSONS

CREEK

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