

**RECOMMENDED MODIFICATIONS:****A. Modify conditions 1, 4 and 13 of the Notice of Determination to read as follows:****1) Development is to be in accordance with approved plans**

The development is to be in accordance with plans listed below:

<b>Plan No.</b>	<b>Description</b>	<b>Prepared by</b>	<b>Dated:</b>
1002-ST9-DA23 Issue F	Subdivision Layout Plan	CivilTech Consulting Engineers	08.03.22
Ref No 1002	Stormwater Management Assessment – Tallowood Ridge Stage 9	CivilTech Consulting Engineers	22.02.20
1002-ST9-DA24 Issue B	Bulk Earthworks Plan	CivilTech Consulting Engineers	15.02.23
1002-ST9-DA25 Issue B	Roadworks Layout Plan	CivilTech Consulting Engineers	15.02.23
1002-ST9-DA26 Issue B	Stormwater Drainage Plan	CivilTech Consulting Engineers	15.02.23
1002-ST9-DA27 Issue B	Water, Sewer & Services	CivilTech Consulting Engineers	15.02.23
1002-ST9-DA28 Issue A	Road 1-2 – Long Section & Typical Section	CivilTech Consulting Engineers	20.02.20
1002-ST9-DA29 Issue A	Road 1-3 – Cross Sections	CivilTech Consulting Engineers	20.02.20
1002-ST9-DA30 Issue A	Road 4 – Long Section, Typical & Cross Section	CivilTech Consulting Engineers	20.02.20
1002-ST9-DA31 Issue B	Road 5– Long Section, Typical & Cross Sections	CivilTech Consulting Engineers	15.02.23
1002-ST9-DA32 Issue B	Landscaping & Tree Removal Plan	CivilTech Consulting Engineers	24.03.23
1002-ST9-DA33 Issue A	Typical Basin Section and Details	CivilTech Consulting Engineers	20.02.20
Update Version 4	Biodiversity Conservation Management Plan	Wetlandcare Australia Revised and updated by East Coast Bush Regeneration	March 2021

as modified by the following plan only in relation to expanding the area and location of Management Zone 8:

<b>Plan No.</b>	<b>Description</b>	<b>Prepared by</b>	<b>Dated:</b>
1002-ST9-MZ1 Issue A	Subdivision Layout Plan with Management Zones Overlay	CivilTech Consulting Engineers	22.03.23

The development is also to be in accordance with any changes shown in red ink on the approved plans or conditions of consent.

The approved plans and related documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

**4) No Tree Removal**

This development consent does not authorise any native tree to be ringbarked, cut down, lopped, removed or damaged, or caused to be ringbarked, cut down, lopped, removed or damaged, except for trees which are approved for removal or pruning by other conditions of this consent.

**13) Amended Landscaping Plan required**

Prior to the issue of a Subdivision Works Certificate, an amended Landscaping Plan must be submitted to, and approved by, Council. The amended Landscaping Plan must include the street trees in the approved Landscaping Plan (1002-ST9-DA32 Issue A, 20.02.20) in addition to the following:

- All native trees shall be retained unless outstanding circumstances for the location or maintenance of utilities/services apply. All retained native trees shall be incorporated within the landscaping of the site;
- Vegetation buffers and 1.8m high fencing between the subdivision and adjoining RU2 zoned properties to the north; and
- Landscaping of the access handle to Lots 254 and 255 including screening vegetation and a 1.8m high solid fence.
- Landscaping of the area between proposed Road 1-2 and the boundary of Lot 2 DP 608876 including screening vegetation and a 1.8m high solid fence.

The amended Landscaping Plan must not include species that represent translocation of native plants outside their geographic range, potential or known environmental weeds or species with potential for genetic pollution. The landscaping plan must indicate:

- a) proposed location for planted shrubs and trees;
- b) botanical name of shrubs and trees to be planted;
- c) mature height of trees to be planted;
- d) location of grassed and paved areas, and
- e) location of native trees and vegetation identified for retention;
- f) timing for planting of landscape vegetation; and
- g) maintenance of landscaped areas.

The amended Landscaping Plan must demonstrate consistency with the General Terms of Approval from the NSW Rural Fire Service dated 13 July 2021 and must comply with Council's Building in the Vicinity of Underground Infrastructure Policy.

The plan is to be prepared by a suitably qualified landscape architect / ecologist who has appropriate experience and competence in landscaping.

**B. Delete condition 51 of the Notice of Determination.**

**C. Insert the following conditions into the Notice of Determination in appropriate order:**

**13A) Biodiversity Conservation Management Plan**

An amendment (or addendum) to the approved Biodiversity Conservation Management Plan for the site must be prepared detailing the proposed vegetation compensation requirements in the Biodiversity Assessment (AWC, 2023) and as depicted on the *Landscaping and Tree Removal Plan* (Dwg. No. 1002-ST9-DA32; CivilTech, 2023).

The amendment/addendum must include the following details:

- a. The compensatory plantings are to be located generally in the area as indicated on the approved plan and or within an expanded Management Zone 8.
- b. illustrate on maps of a suitable scale (1:200 or better) the accurate extent of proposed compensation.
- c. indicate the location of compensatory plantings in plan and word form with a minimum of 210 native species to be planted.
- d. detail the methodology for habitat restoration and specify the use of qualified and experienced bush regenerators only. Areas outside the approved development footprint and APZs must be restored or replanted.
- e. specify that planting and/or restoration works will commence immediately upon approval of the amendment/addendum.

**13B) No tree removal prior to Subdivision Works Certificate**

No native trees or vegetation may be cleared or removed until a Subdivision Works Certificate has been issued.

**13C) Retained trees**

All trees to be retained in accordance with this development consent must be illustrated on any and all relevant Construction Plans, along with their Tree Protection Zones formulated in accordance with *AS 4970-2009 – Protection of Trees on Development Sites*.

**13D) Retained trees and offset area**

All trees and vegetation communities to be retained in accordance with this development consent must be illustrated on any and all relevant Construction Plans, along with their Tree Protection Zones for any trees retained in proximity to approved works or structures. The proposed compensation area must be generally in accordance with the marked-up submitted plan entitled *name of plan with Lot & DP and address with author and date* and must be illustrated on any and all relevant Construction Plans.

**24A) Compensatory planting and/or Primary ecological restoration work**

Compensatory planting and/or primary ecological restoration work as defined within the approved amendment/addendum to the approved Biodiversity Conservation Management Plan must be completed prior to any native tree removal on the site.

**24B) Trees to be retained and protected**

Trees to be retained are to be protected by a Tree Protection Zone (TPZ) exclusion fence. The fence is to be constructed in accordance with Sections 3.2 and 4.3 of AS4970-2009 Protection of trees on development sites (Standards Australia 2009). The fence must:

- a. Be located outside the dripline of the tree so as to minimise disturbance to tree roots;
- b. have a minimum height of 1.8 metres;
- c. be constructed of wire mesh panels, plywood, steel star pickets or similar, with a maximum distance of 2metres between star pickets;
- d. have a minimum of 3 strands of steel wire or similar;
- e. have high visibility barrier mesh (eg orange), shade cloth or similar, attached to the outside of the fence and continuing around its perimeter;
- f. include at least one Tree Protection Zone (TPZ) sign in accordance with Section 4.4 of AS4970-2009.

Activities that are excluded within the TPZ (as per section 4.2 of AS4970-2009) include excavation, construction activity, grade changes, surface treatment and storage of

material. If these activities are required within the TPZ they may only occur under the supervision of the project arborist (minimum AQF level 5 qualified arborist).

The Tree Protection Zone (TPZ) exclusion fence is to be maintained for the duration of the site clearing, preparation, construction and landscaping works.

**33A) Protection of Native Trees**

All trees nominated to be retained by notation or condition as a requirement of the development consent shall be maintained and protected during demolition, excavation and construction on the site in accordance with AS 4970-2009 – Protection of Trees on Development Sites.

**33B) Care to be taken when placing services near trees**

To minimise root disturbance where services are to be laid in close proximity to trees, any excavation within the Tree Protection Zone (TPZ) for installation of underground services is to be done by directional drilling or in manually excavated trenches in accordance with Section 4.5.5 of AS4970-2009. Works must be conducted under the supervision of the project arborist (minimum AQF level 5 qualified arborist), and may include the use of pneumatic or hydraulic tools such as air knives.

**33C) Maintenance of fencing to protect trees**

Fencing required to protect trees to be retained is to be maintained for the duration of the site clearing, preparation and construction works. During site works and construction all measures are to be taken to prevent damage to trees and other vegetation (including root systems) to be retained.

No building materials or other items are to be placed or stored within the fenced off areas. A qualified arborist experienced in tree management must be present on a full or part-time basis to advise on the maintenance of the trees for their protection for the duration of the project.

**33D) Protection of koalas/ native fauna from disturbance**

- a. Clearing of native vegetation and/or earthworks as part of any development approval from Council must be temporarily suspended within a range of 25m from any tree which is concurrently occupied by a koala and must not resume until the koala has moved from the tree of its own volition.
- b. Any clearing of land must not commence until the area proposed for clearing has been inspected for the presence of koalas and approval given in writing by a suitably qualified individual.
- c. Approval to proceed with the clearing of vegetation in accordance with this section is only valid for the day on which the inspection has been undertaken.
- d. The individual referred to in (ii) above, or a nominated representative, must remain on site during any approved clearing of vegetation.

**51A) Habitat Compensation works to be completed**

Plantings and/or restoration works required as compensation for loss of native trees are to be completed in accordance with the approved amendment/addendum to the site Biodiversity Conservation Management Plan prior to issue of the subdivision certificate for the development. The site must be assessed to determine satisfaction of performance criteria by Council. Alternatively, Independent sign-off may be undertaken by (Australian Association of Bush Regenerators) AABR-accredited Bush Regenerators, see <http://www.aabr.org.au/do/business-directory/wpbdm-category/aabr-accredited-bush-regenerators/>. In all cases a final monitoring report must accompany any application for satisfaction of this condition.

**51B) Vegetation Management Plan monitoring**

A monitoring report to be submitted to Council demonstrating all works are completed up to and including year 1 of the approved VMP prior to the issue of the Subdivision Certificate.

**51C) Landscaping works to be completed**

Landscaping is to be implemented in accordance with the revised and approved Landscape Plan prior to issue of the *subdivision certificate* for the development. A site meeting must be arranged with Council to determine satisfaction of this condition.

**67) No Tree Removal**

This development consent does not authorise any native tree to be ringbarked, cut down, lopped, removed or damaged, or caused to be ringbarked, cut down, lopped, removed or damaged in contravention of Byron Development Control Plan 2014 and Development Control Plan 2010 as applicable to the land.

**68) Limited Tree Removal**

Removal of existing native trees from the site is limited to those expressly permitted by this development consent as marked on the *Landscaping and Tree Removal Plan* (Dwg. No. 1002-ST9-DA32; CivilTech, 2023). All other trees and native plants within the site are to be retained and protected.

**69) Protection of Native Trees**

All trees nominated to be retained by notation or condition as a requirement of the development consent shall be maintained and protected during demolition, excavation and construction on the site in accordance with AS 4970-2009 – Protection of Trees on Development Sites.

**70) Protection of native fauna from disturbance**

- a. Any clearing of native vegetation and/or earthworks must not commence until the area proposed for clearing has been inspected for the presence of all fauna species using the site by a suitably qualified and experienced individual;
- b. Should fauna be present at the time of proposed clearing, relevant fauna spotter/catcher protocols must be followed to prevent injury to wildlife;
- c. Any injured wildlife must be taken to a local wildlife vet for treatment.
- d. Approval to proceed with the clearing of vegetation in accordance with this section is only valid for the day on which the inspection has been undertaken.
- e. The individual referred to in (ii) above, or a nominated representative, must remain on site during any approved clearing of vegetation.

**71) Replanting and restoration works**

Replanting and restoration works must be undertaken and continued until the performance criteria have been achieved in accordance with the approved amendment/addendum to the Biodiversity Conservation Management Plan for a minimum period of five years, during which annual monitoring reports must be submitted to Council for approval.

**72) Landscaping**

All landscaping on any part of the site must accord with the requirement to plant only appropriate local native species as marked on the stamped plans.

**D. Modify Schedule 3 of the Notice of Determination to read as follows:**



## SCHEDULE 3. INTEGRATED DEVELOPMENT GENERAL TERMS OF APPROVAL



**NSW RURAL FIRE SERVICE**

Byron Shire Council  
PO Box 219  
MULLUMBIMBY NSW 2482

Your reference: (CNR-54200) 10.2020.109.4  
Our reference: DA20200311000919-S4.55-1

**ATTENTION:** Luke Munro

Date: Wednesday 10 May 2023

Dear Sir/Madam,

**Integrated Development Application**  
**s100B – Subdivision – Torrens Title Subdivision**  
**DA 10.2020.109.4 - 86 TUCKEROO AVENUE MULLUMBIMBY 2482, 196//DP1281667**

I refer to your correspondence dated 18/04/2023 seeking general terms of approval for the above Integrated Development in accordance with s4.55 of the *Environmental Planning and Assessment Act 1979*.

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

### **Asset Protection Zones**

***The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:***

1. At the issue of a subdivision certificate, and in perpetuity to ensure ongoing protection from the impact of bush fires, the entire area of Lots 240 to 280 and Lots C1 to C7 must be managed as an inner protection area (IPA) in accordance with the requirements of Appendix 4 of *Planning for Bush Fire Protection 2019*. When establishing and maintaining an IPA the following requirements apply:

- tree canopy cover should be less than 15% at maturity;
- trees at maturity should not touch or overhang the building;
- lower limbs should be removed up to a height of 2 m above the ground;
- tree canopies should be separated by 2 to 5 m;
- preference should be given to smooth-barked and evergreen trees;
- large discontinuities or gaps in the shrubs layer should be provided to slow down or break the progress of fire towards buildings;
- shrubs should not be located under trees;
- shrubs should not form more than 10% ground cover;
- clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;

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#### **Postal address**

NSW Rural Fire Service  
Locked Bag 17  
GRANVILLE NSW 2142

#### **Street address**

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

**T** (02) 8741 5555  
**F** (02) 8741 5550  
[www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)

- grass should be kept mown (as a guide, grass should be kept to no more than 100mm in height); and
- leaves and vegetation debris should be removed regularly.

2. At the issue of a subdivision certificate, a suitably worded instrument(s) created pursuant to section 88 of the Conveyancing Act 1919 must be placed on:

- Lots 240 to 280 and Lots C1 to C7, which requires the provision of the above asset protection zones;
- Lot C8, which requires a 21 metre wide asset protection zone to the south of Lot C1, to be managed as an inner protection area (IPA) in accordance with the requirements of Appendix 4 of *Planning for Bush Fire Protection 2019*; and
- the following lots, which prohibits the construction of buildings other than Class 10b structures within the specified areas (shown as an APZ on the drawing titled 'Subdivision Layout Plan Stage 9 - 41 Residential Lots, 7 Community Title, 1 Common Prop', prepared by CivilTech Consulting Engineers (Ref: Dwg. No. 1002-ST9-DA23, Issue C), dated 5 April 2021):
  - Lots 240 to 243 - 9 metres wide along the eastern boundary;
  - Lot 243 - 10 metres wide along the northern boundary;
  - Lots 256 to 262 - 12 metres wide along the north-western boundary;
  - Lot 262 and Lots C1 to C7 - 10 metres wide along the western boundary;
  - Lot C3 - 9 metres wide along the southern boundary;
  - Lot C2 - 9 metres wide along the northern boundary; and
  - Lot 280 - 12 metres wide along the eastern boundary.

The name of authority empowered to release, vary or modify the instrument shall be Byron Shire Council.

3. A Vegetation Management Plan must be prepared for Lot C8 requiring ongoing management of the land in accordance with details contained in the letter from Bayview Land Development Pty Ltd to the NSW Rural Fire Service, dated 14 June 2021.

#### **Access – Public Roads**

The intent of measures is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area. To achieve this, the following conditions shall apply:

4. Access roads must comply with the following requirements of Table 5.3b of *Planning for Bush Fire Protection 2019*:

- roads are two-way sealed roads;
- minimum carriageway width (kerb to kerb) of 8 metres for perimeter roads and 5.5 metres for nonperimeter roads;
- parking is provided outside of the carriageway width;
- curves of roads have a minimum inner radius of 6 metres;
- the road crossfall does not exceed 3 degrees;
- a minimum vertical clearance of 4 metres to any overhanging obstructions, including tree branches, is provided;
- traffic management devices are constructed to not prohibit access by emergency services vehicles;
- maximum grades for sealed roads do not exceed 15 degrees and an average grade of not more than 10 degrees or other gradient specified by road design standards, whichever is the lesser gradient;
- where kerb and guttering is provided on perimeter roads, roll top kerbing should be used to the hazard side of the road;
- the capacity of road surfaces and any bridges / causeways is sufficient to carry fully loaded firefighting vehicles (up to 23 tonnes);
- bridges/causeways are to clearly indicate load rating;
- hydrants are located outside of parking reserves and road carriageways to ensure accessibility to reticulated water for fire suppression; and
- hydrants are provided in accordance with the relevant clauses of AS 2419.1:2005 - Fire hydrant installations System design, installation and commissioning.

The termination of Road 5 must include:

- a minimum 12 metre radius turning circle or turning head compliant with Appendix 3 of *Planning for Bush Fire Protection 2019*; and



- formed access onto Clays Road for emergency access. If the access includes bollards, a gate or similar, the locking mechanism must be approved by the local RFS Fire Control Centre.

#### **Access – Property Access**

***The intent of measures is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation. To achieve this, the following conditions shall apply:***

5. The access handle to Lots 254 and 255 must comply with the following requirements of *Planning for Bush Fire Protection 2019*:

- the access handle is a two-wheel drive, all-weather road;
- minimum 4 metre carriageway width; and
- minimum vertical clearance of 4 metres to any overhanging obstructions, including tree branches.

#### **Water and Utility Services**

***The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:***

6. The provision of water, electricity and gas must comply with Table 5.3c of *Planning for Bush Fire Protection 2019*.

#### **General Advice – Consent Authority to Note**

- Development applications lodged on lots created within this subdivision may be subject to further assessment under the Environmental Planning & Assessment Act 1979.
- The above conditions are based on the subdivision layout identified in the drawing titled 'Subdivision Layout Plan Stage 9 - 41 Residential Lots, 7 Community Title, 1 Common Prop', prepared by CivilTech Consulting Engineers (Ref: Dwg. No. 1002-ST9-DA23, Issue C), dated 5 April 2021.

This letter is in response to an assessment of the application based on the submitted further information and supersedes our previous general terms of approval dated 09/07/2021.

For any queries regarding this correspondence, please contact Catherine Ryland on 1300 NSW RFS.

Yours sincerely,

Allyn Purkiss  
**Manager Planning & Environment Services**  
**Built & Natural Environment**



NSW RURAL FIRE SERVICE

# BUSH FIRE SAFETY AUTHORITY

Subdivision – Torrens Title Subdivision  
DA 10.2020.109.4 - 86 TUCKEROO AVENUE MULLUMBIMBY 2482, 196//DP1281667  
RFS Reference: DA20200311000919-S4.55-1  
Your Reference: (CNR-54200) 10.2020.109.4

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

This authority supersedes the previous Bush Fire Safety Authority DA20200311000919-CL55-1 issued on 09/07/2021 and confirms that, subject to the attached reissued General Terms of Approval being met, the proposed development will meet the NSW Rural Fire Service requirements for Bush Fire Safety under *s100b of the Rural Fires Act 1997*.

**Allyn Purkiss**

**Manager Planning & Environment Services  
Built & Natural Environment**

Wednesday 10 May 2023

**E. Modify the Note titled “Water payments under the Water Management Act 2000” in Schedule 5 of the Notice of Determination to read as follows:**

**Water payments under the Water Management Act 2000**

Charges will be calculated based on the additional water and sewerage load that the proposed development generates, shown in Equivalent Tenements (ET) by the following table:

**ADDITIONAL WATER & SEWER LOAD OF DEVELOPMENT**  
**(ET Policy 2022)**

Water	48.20 ET
Sewer	48.00 ET

NB: Information regarding Development Servicing charges can be found on the Byron Shire Council website (<https://www.byron.nsw.gov.au/Services/Water-sewer/Plumbers-and-developers/Calculate-the-cost-of-an-Equivalent-Tenement#section-3>).

These charges will enable you to calculate the total contribution charges payable when you are ready to pay them. Developer charges will be calculated in accordance with the Development Servicing Plan applicable at the date of payment.

**STATEMENT OF REASONS**

*Council is required to give and publicly notify reasons for a range of planning decisions where they are deciding if development should proceed to help community members to see how their views have been taken into account and improve accountability to stakeholders. A statement of reasons for the determination of this application is provided below.*

**Statement of Reasons**

The modifications are minor and the development as modified is substantially the same as the originally approved development, with no significantly detrimental environmental impacts.

**How community views were addressed**

The application was publicly exhibited in accordance with the Community Participation Plan. The submissions received were considered on merit and addressed during assessment of the application. To view the considerations, please contact Council to view a copy of the assessment report relating to this application.