Mareeba
SHIRE COUNCIL

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2 March 2020

| | |
|---|---|
| Senior Planner: | Brian Millard |
| Direct Phone: | 4086 4657 |
| Our Reference: | MCU/20/0003 |
| Your Reference: | WP20 006 R&O DA01 |

Reever and Ocean Pty Ltd
C/- wildPLAN Pty Ltd
PO Box 8028
CAIRNS QLD 4870

Dear Applicant/s

# Decision Notice
## *Planning Act 2016*

I refer to your application and advise that on 2 March 2020 under delegated authority, Council decided to approve the application in full subject to conditions.

Details of the decision are as follows:

### APPLICATION DETAILS

| | |
|---|---|
| Application No: | MCU/20/0003 |
| Street Address: | 112 Barnwell Road, Kuranda |
| Real Property Description: | Lot 17 on SP296830 & Lot 22 on SP304952 |
| Planning Scheme: | Mareeba Shire Council Planning Scheme 2016 |

### DECISION DETAILS

| | |
|---|---|
| Type of Decision: | Approval |
| Type of Approval: | Development Permit for Material Change of Use - Nature-based tourism (natural environment, culture and heritage appreciation) |
| Date of Decision: | 2 March 2020 |

### CURRENCY PERIOD OF APPROVAL

The currency period for this development approval ceases to have effect (lapses) on **2 September 2020** (refer to Condition 2.3.)

## INFRASTRUCTURE

Where conditions relate to the provision of infrastructure, these are non-trunk infrastructure conditions unless specifically nominated as a "***necessary infrastructure condition***" for the provision of trunk infrastructure as defined under Chapter 4 of the *Planning Act 2016*.

## ASSESSMENT MANAGER CONDITIONS

(A) ASSESSMENT MANAGER'S CONDITIONS (COUNCIL)

(a) Development assessable against the Planning Scheme

1. Development must be carried out generally in accordance with the approved plans and the facts and circumstances of the use as submitted with the application, including but not necessarily limited to the subject of any alterations:

   - found necessary by Council's delegated officer at the time of examination of the engineering plans or during the construction of the development because of particular engineering requirements; and
   - to ensure compliance with the following conditions of approval.

2. Timing of Effect

   2.1 The conditions of the development permit must be complied with to the satisfaction of Council's delegated officer prior to the commencement of the use except where specified otherwise in these conditions of approval.

   2.2 Prior to the commencement of use, the applicant must notify Council that all the conditions of the development permit have been complied with, except where specified otherwise in these conditions of approval.

   2.3 Approval Lapse Date

   In accordance with section 65 (2) of the Act, This development permit will cease to have effect on **2 September 2020**. The approved use (as outlined in the facts and circumstances of the application) must cease by close of business on 2 September 2020.

3. General

   3.1 The applicant/developer is responsible for the cost of necessary alterations to existing public utility mains, services or installations required by works in relation to the proposed development or any works required by condition(s) of this approval.

3.2 All external works must be designed, constructed and carried out in accordance with FNQROC Development Manual requirements (as amended) and to the satisfaction of Council's delegated officer.

3.3 Waste Management

On site refuge storage area must be provided and be screened from view from adjoining properties and road reserve by 1 metre wide landscaped screening buffer or 1.8m high solid fence or building.

3.4 Hours of Operation

The operating hours shall be between 7am and 7pm, Monday to Sunday.

3.5 A maximum of 70 tourists per day (on average) are permitted on the subject site in association with the approved use.

3.6 No more than 150 tourists/visitors (combination of MCU/18/0006, MCU/19/0018 and MCU/20/0002 tourist/visitors) are permitted on-site unless or until condition 4.2 (ii) of the Tourist Attraction approval MCU/18/0006, requiring the upgrade of Barnwell Road is completed.

3.7 In order to reduce amenity impacts, quad bike activities associated with the approved use are not permitted within 150 metres of the northern boundary of Lot 22 on SP304952 at any time.

Note - Quad bike activities associated with the existing use, namely animal husbandry, is permitted within this area.

3.8 The maximum noise level of any ATV (quad bike) operated in the conduct of the approved use shall not exceed 63dBA (measured at 50 metres from the ATV or at the boundary of any land not forming part of this development approval).

3.9 Any fuel stored on site associated with the approved use must be kept in a sealed, bunded area with a storage capacity of at least 150% of the storage capacity of any fuel storage tanks/containers.

3.10 The Applicant is to provide Council monthly tourist figures, within five (5) business days of the start of each calendar month.

4. Infrastructure Services and Standards

4.1 Traffic Signage

4.1.1 Prior to the commencement of the use, the applicant must submit a design for the treatment of traffic within the section

of Barnwell Road between the Leila's Way intersection and the access into Lot 22 on SP304952.

The design must be prepared and certified by a Registered Professional Engineer of Queensland (RPEQ).

The design must be prepared in accordance with the Manual of Uniform Traffic Control Devices (MUTCD) and take into account site-specific factors, including, but not limited to road geometry and impact of traffic associated with the operation.

4.1.2 Prior to the commencement of the use, traffic signs must be installed in accordance with the applicant's design and relevant standards. Signs must be maintained by the applicant at all times during the use, to the satisfaction of Council's delegated officer.

4.1.3 Once the signage is installed, the applicant must not remove or alter the signage without approval from Council's delegated officer.

4.2 Carparking/Internal Driveways

The designated car parking area and internal driveways servicing the development must be constructed with compacted gravel to a minimum depth of 100mm and be appropriately drained prior to the commencement of the use, and maintained for the life of the development, to the satisfaction of Council's delegated officer.

4.3 Environmental Management

4.3.1 Any material likely to degrade the water (eg oils, lubricants, solvents, coolants, degreasing agents etc) must be stored within a bunded area, or an appropriately designed chemical storage container, suitable for preventing the escape of material into surface or underground water resources.

4.3.2 An emergency spill containment kit must be kept on site at all times during the operation of the approved use.

4.3.3 A vehicle wash down facility must be provided on-site to reduce the spread of weed species. The vehicle wash down facility is to be located so as to prevent the discharge of sediment, contaminants or wastewater to waterways, creeks or watercourses.

4.3.4 All access tracks, driveways and the like are to be maintained so that the risk and consequence of erosion is minimised, to the satisfaction of Council's delegated officer. All batters are to be vegetated or otherwise protected from scour, to the satisfaction of Council's delegated officer.

4.3.5 All tracks, including all creek/waterway crossings, driveways and the like used for ATV (quad bike) tours are to be maintained for the life of the development, so that the risk and consequence of erosion/sedimentation is minimised, to the satisfaction of Council's delegated officer.

4.3.6 Crossings

The crossing of creeks internal to the site by quad bikes used for tourist activities shall:

(a) be limited to the use of "South Crossing 1" and "South-East Crossing 3" as depicted on "Figure 1: Erosion and Sediment Control Points of Interest" prepared by NRA Consultants;
(b) involve a maximum of 60 crossings per day (single movement) over any single creek crossing location; and
(c) not involve the use of "South Crossing 2" as depicted on "Figure 1: Erosion and Sediment Control Points of Interest" prepared by NRA Consultants;

Note: 60 crossings (single movement) is equivalent to 30 return trips.

The crossing of creeks internal to the site by foot:

(a) only occurs where involving an essential crossing; or
(b) where for a non-essential crossing only occurs where a foot scrub is used immediately prior to the non-essential crossing.

Note: An "essential crossing" is considered a crossing where no feasible alternative to a crossing by foot is available. This may include (but not be limited to) a crossing in response to a stranded vehicle, dangerous situation, potential for environmental harm or emergency situation.

Note: A foot scrub is required to be undertaken to limit the spread of Chytrid fungus.

Between 2 March 2020 and 31 May 2020, the following management protocols are to be implemented and followed in relation to the crossing of creeks internal to the site by vehicles associated with the use:

(a) On-site rain gauge stations are to be monitored on a daily basis;
(b) Where more than 25mm of rainfall is recorded within a 24 hour period, from the monitoring undertaken in accordance with paragraph (a), the crossing of any on-site creek for tourist activities is not to occur; and
(c) The crossing of any on-site creek for tourist activities may recommence only when the level of water within a creek returns to pre-rainfall levels.

4.3.7 Speed Limits

The following speed limits are applicable to quad bikes used for tourist activities:

(a) Where within a waterway corridor – 5km/h (walking pace)
(b) Where within 100 metres of a waterway corridor – 10km/h
(c) Where paragraphs (a) and (b) do not apply – 20km/h

4.3.8 Quad Bikes

Any quad bike used in association with the use must not leave the site unless:

(a) The quad bike is transported by truck (and not under its own power) and the movement of the quad bike off site is for maintenance or servicing reasons; or
(b) The movement of the quad bike is associated with an existing lawful rural use of the site.

4.3.9 Sediment and Erosion Control

The following sediment and erosion control measures are to be implemented on the site to limit the risk of sediment entering the watercourses, as appropriate:

(a) Whoa-boy diversion drains, to divert water to grassed areas on the internal unsealed access-ways each side of the creek crossing;

(b) Sections of appropriately sized rock at least 1.5 metres either side of any creek crossing and extending the full width of the access road, that will act as a shaker grid to dislodge dirt and debris prior to entering crossing;
(c) Coir logs – pinned with wooden stakes, laid either side of the crossing to clean water entering the crossing and clean water leaving the crossing;
(d) Embankments (where applicable) on either side of unsealed access ways covered with geofabric.

4.3.10 Internal Signs

The following signage is to be erected on the site:

(a) Signs located at the entrance to each creek crossing advising vehicle operators of the applicable speed limit under this approval; and
(b) Signage located in the vicinity of the main tourist area, providing information on the Kuranda tree frog.

4.4 Non-Reticulated Water Supply

The development must be provided with a potable water supply that can satisfy the standards for drinking water set by the Australian Drinking Water Guidelines 6, 2011 (National Health and Medical Research Council and the National Resource Management Ministerial Council).

All non-potable sources of water must be sign posted "non-potable water supply" or similar in order to deter consumption.

4.5 On-site Wastewater Management

All on site effluent disposal associated with the approved use must be in compliance with the latest version of On-Site Domestic Wastewater Management Standard (ASNZ1547) to the satisfaction of the Council's delegated officer.

**Note:** Any on-site wastewater treatment system with a total daily peak design capacity of at least 21 equivalent persons (EP) is an Environmentally Relevant Activity (ERA 63 - Sewerage Treatment) and an Environmental Authority is required.

## REFERRAL AGENCIES

Not Applicable.

## APPROVED PLANS

The following plans are Approved plans for the development:

| Plan/Document Number | Plan/Document Title | Prepared by | Dated |
|---|---|---|---|
| AA-GL01a | Nature Based Tourism Site Plan Feb 2020 | Develop North | 24/02/2020 |
| Figure 1 | Erosion and Sediment Control Points of Interest | NRA Consultants | Nov 2017 |

## ADVISORY NOTES

The following notes are included for guidance and information purposes only and do not form part of the assessment manager conditions:

(A) ASSESSMENT MANAGER'S ADVICE

(a) Compliance with applicable codes/policies

The development must be carried out to ensure compliance with the provisions of Council's Local Laws, Planning Scheme Policies, Planning Scheme and Planning Scheme Codes to the extent they have not been varied by a condition of this approval.

(b) Compliance with Acts and Regulations

The erection and use of the building must comply with the Building Act and all other relevant Acts, Regulations and Laws, and these approval conditions.

(c) Environmental Protection and Biodiversity Conservation Act 1999

The applicant is advised that referral may be required under the *Environmental Protection and Biodiversity Conservation Act 1999* if the proposed activities are likely to have a significant impact on a matter of national environmental significance. Further information on these matters can be obtained from www.environment.gov.au.

(d) Cultural Heritage

In carrying out the activity the applicant must take all reasonable and practicable measures to ensure that no harm is done to Aboriginal cultural heritage (the "cultural heritage duty of care"). The applicant will comply with the cultural heritage duty of care if the applicant acts in accordance with gazetted cultural heritage duty of care guidelines.

An assessment of the proposed activity against the duty of care guidelines will determine whether or to what extent Aboriginal cultural heritage may be harmed by the activity. Further information on cultural heritage, together with a copy of the duty of care guidelines and cultural heritage search forms, may be obtained from www.datsip.qld.gov.au.

## PROPERTY NOTES

Not Applicable.

## FURTHER DEVELOPMENT PERMITS REQUIRED

Not Applicable.

## SUBMISSIONS

Not Applicable.

## RIGHTS OF APPEAL

You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* is attached.

During the appeal period, you as the applicant may suspend your appeal period and make written representations to council about the conditions contained within the development approval. If council agrees or agrees in part with the representations, a "negotiated decision notice" will be issued. Only one "negotiated decision notice" may be given. Taking this step will defer your appeal period, which will commence again from the start the day after you receive a "negotiated decision notice".

## OTHER DETAILS

If you wish to obtain more information about Council's decision, electronic copies are available on line at www.msc.qld.gov.au, or at Council Offices.

Yours faithfully

**BRIAN MILLARD**
**SENIOR PLANNER**

Enc: Approved Plans/Documents
Appeal Rights

# Approved Plans/Documents

2/3/2020
B. M

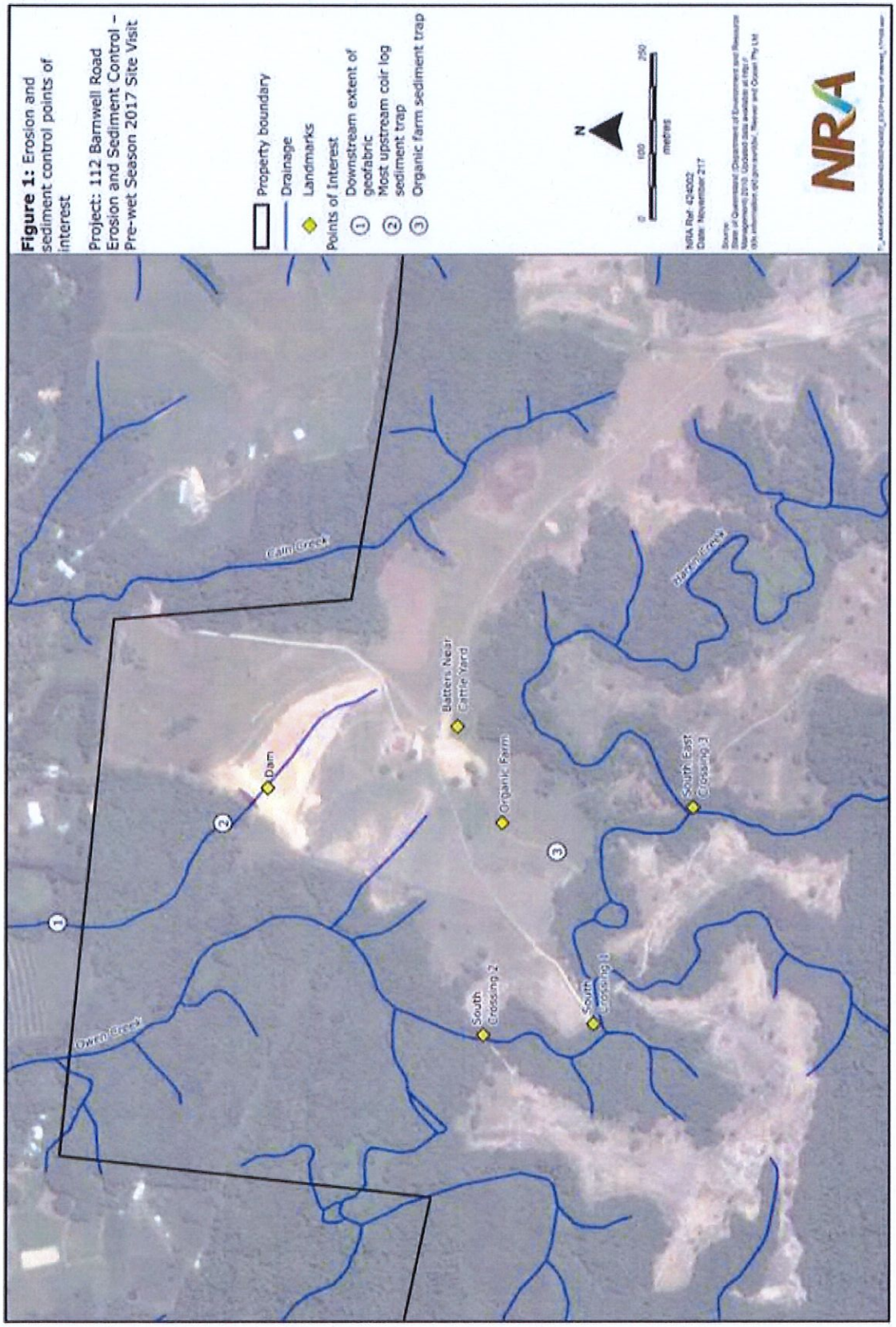
Figure 1: Erosion and sediment control points of interest
Project: 112 Barnwell Road Erosion and Sediment Control - Pre-wet Season 2017 Site Visit
Property boundary
Drainage
Landmarks
Points of Interest
1 Downstream extent of geofabric
2 Most upstream coir log sediment trap
3 Organic farm sediment trap
N
0
100
250
metres
NRA Ref: 424002
Date: November 2017
Source
NRA
Dam
Batters Near Cattle Yard
Organic Farm
South East Crossing 3
South Crossing 2
South Crossing 1
Owen Creek
Calm Creek
Harris Creek

2/3/2020

# Appeal Rights

*PLANNING ACT 2016 & THE PLANNING REGULATION 2017*

**Chapter 6 Dispute resolution**

**Part 1 Appeal rights**

**229 Appeals to tribunal or P&E Court**

(1) Schedule 1 of the *Planning Act 2016* states –
  (a) Matters that may be appealed to –
    (i) either a tribunal or the P&E Court; or
    (ii) only a tribunal; or
    (iii) only the P&E Court; and
  (b) The person-
    (i) who may appeal a matter (**the *appellant***); and
    (ii) who is a respondent in an appeal of the matter; and
    (iii) who is a co-respondent in an appeal of the matter; and
    (iv) who may elect to be a co-respondent in an appeal of the matter.

(Refer to Schedule 1 of the Planning Act 2016)

(2) An appellant may start an appeal within the appeal period.
(3) The ***appeal period*** is –
  (a) for an appeal by a building advisory agency – 10 business days after a decision notice for the decision is given to the agency; or
  (b) for an appeal against a deemed refusal – at any time after the deemed refusal happens; or
  (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises – 20 business days after a notice us published under section 269(3)(a) or (4); or
  (d) for an appeal against an infrastructure charges notice – 20 business days after the infrastructure charges notice is given to the person; or
  (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given – 30 business days after the applicant gives the deemed approval notice to the assessment manager; or
  (f) for any other appeal – 20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

*Note –*
*See the P&E Court Act for the court's power to extend the appeal period.*

(4) Each respondent and co-respondent for an appeal may be heard in the appeal.
(5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
(6) To remove any doubt. It is declared that an appeal against an infrastructure charges notice must not be about-

(a) the adopted charge itself; or
(b) for a decision about an offset or refund-
  (i) the establishment cost of trunk infrastructure identified in a LGIP; or
  (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

**230 Notice of appeal**

(1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that-
  (a) is in the approved form; and
  (b) succinctly states the grounds of the appeal.
(2) The notice of appeal must be accompanied by the required fee.
(3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to –
  (a) the respondent for the appeal ; and
  (b) each co-respondent for the appeal; and
  (c) for an appeal about a development application under schedule 1, table 1, item 1 – each principal submitter for the development application; and
  (d) for and appeal about a change application under schedule 1, table 1, item 2 – each principal submitter for the change application; and
  (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
  (f) for an appeal to the P&E Court – the chief executive; and
  (g) for an appeal to a tribunal under another Act – any other person who the registrar considers appropriate.
(4) The *service period* is –
  (a) if a submitter or advice agency started the appeal in the P&E Court – 2 business days after the appeal has started; or
  (b) otherwise – 10 business days after the appeal is started.
(5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
(6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

231 Other appeals

(1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
(2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
(3) A person who, but for subsection (1) could have made an application under the Judicial Review Act 1991 in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
(4) In this section –
  *decision* includes-
  (a) conduct engaged in for the purpose of making a decision; and

(b) other conduct that relates to the making of a decision; and
(c) the making of a decision or failure to make a decision; and
(d) a purported decision ; and
(e) a deemed refusal.

*non-appealable,* for a decision or matter, means the decision or matter-
(a) is final and conclusive; and
(b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the Judicial Review Act 1991 or otherwise, whether by the Supreme Court, another court, a tribunal or another entity; and
(c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

232 Rules of the P&E Court

(1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
(2) However, the P&E Court may hear and decide an appeal even if the person has not complied with the rules of the P&E Court.