

28 November 2023

Clayton J Crowe
8 Victor Place
KURANDA QLD 4881

Senior Planner: Carl Ewin
Direct Phone: 07 4086 4656
Our Reference: OPW/23/0004

Dear Applicant,

Decision Notice

Planning Act 2016

I refer to your application and advise that on 27 November 2023 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:	OPW/23/0004
Street Address:	8 Victor Place, Kuranda
Real Property Description:	Lot 8 on RP861072
Planning Scheme:	Mareeba Shire Council Planning Scheme 2016

DECISION DETAILS

Type of Decision:	Approval
Type of Approval:	Development Permit for Operational Works (Vegetation Clearing) assessable against the Mareeba Shire Council Planning Scheme 2016 - Environmental Significance Overlay
Date of Decision:	27 November 2023

CURRENCY PERIOD OF APPROVAL

The currency period for this development approval is two (2) years starting the day that this development approval takes effect. (Refer to Section 85 "Lapsing of approval at end of currency period" of the *Planning Act 2016*.)

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**(C) ASSESSMENT MANAGER'S CONDITIONS (COUNCIL)**

1. The extent and location of operational works (clearing) carried out on the site must be generally in accordance with that shown on the approved plan/s.
2. All vegetation cleared from the approved area must be either removed from the site, relocated or wood chipped for reuse as mulch on-site.
3. The operational works (clearing) must not occur over the months of October and November in order to avoid potential impacts to the flute nosed bat.
4. The proposed clearing area must be visually inspected prior to clearing commencing to identify the presence of any wildlife and a qualified wildlife spotter/catcher must be present on-site during the clearing to help minimise impacts on wildlife.
5. No further assessable clearing can be carried out on the site without prior Council approval.

REFERRAL AGENCIES

Not Applicable.

APPROVED PLANS

The following plans are Approved plans for the development:

Plan/Document Number	Plan/Document Title	Prepared by	Dated
-	Site Plan	Applicant	-
HEB23.06.01c	MSC Planning Scheme Assessment	Gemma Horner – Northern Ecology	14/10/2023

ADVISORY NOTES

Not Applicable.

PROPERTY NOTES

Not Applicable.

FURTHER DEVELOPMENT PERMITS REQUIRED

Not Applicable.

SUBMISSIONS

Not Applicable.

RIGHTS OF APPEAL

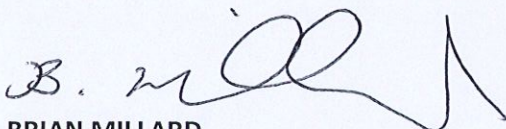
You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* is attached.

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.

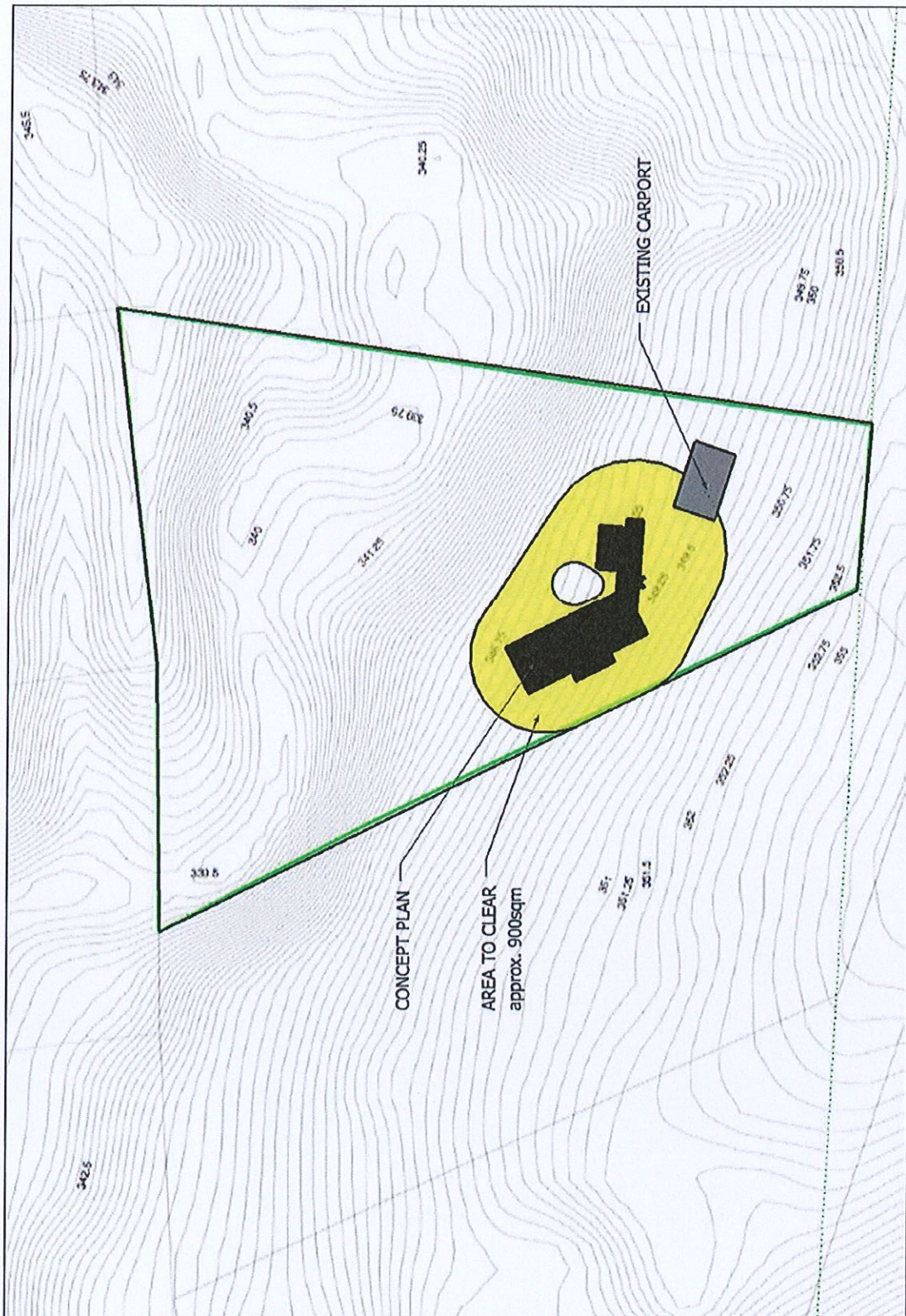
Yours faithfully



BRIAN MILLARD
COORDINATOR PLANNING SERVICES

Enc: Approved Plans/Documents
Appeal Rights

Approved Plans/Documents



Date: 14th October 2023

To: Clayton Crowe

From: Gemma Horner, Northern Ecology

Subject: MSC Planning Scheme Assessment

Reference: HEB23.06.01c

BACKGROUND

In August 2023 Northern Ecology conducted an Ecological Assessment at 8 Victor Place, Kuranda to provide supporting documentation for a proposed development of a residential dwelling.

The ecological assessment was aimed at identifying the ecological values present at the site to enable accurate assessment of relevant statutory and non-statutory matters that may be impacted by the development.

The proposed footprint is mapped as containing one Matter of Local Environmental Significance (MLES) under the *Mareeba Shire Council (MSC) Planning Scheme 2016* – Environmental Significance Overlays, MSES Wildlife Habitat. As such, assessment was completed in accordance with the MSC Policy 2 - Ecological Assessment Reports to accurately address the potential impacts on Wildlife Habitat against the performance outcomes described in the Environmental Significance Overlay Code (S8.2.4) under the *MSC Planning Scheme 2016*.

This document details the assessment against the relevant Environmental Significance Overlays associated with the development and should be read in conjunction with the Ecological Assessment Report (Northern Ecology, 2023).

ENVIRONMENTAL SIGNIFICANCE OVERLAY CODE – WILDLIFE HABITAT

Wildlife habitat mapping covers the mapped remnant vegetation within the study area and is mapped across the entire Project footprint (refer Northern Ecology 2023).

The remnant vegetation within the Project footprint contains suitable habitat for protected wildlife. During the field survey, it was identified that the area contains potential foraging resources and habitat suitable for native species (refer Northern Ecology, 2023).

Approximately 900 m² is proposed to be cleared for the Project which comprises a disturbed remnant vine forest community and non-remnant areas associated with the existing carport. There were no unique habitat features within the Project footprint that are not available in the surrounding landscape. Furthermore, given the contiguous habitat in the surrounding landscape no fragmentation, or habitat isolation will occur as a result of works.

Nevertheless, the survey confirmed that native fauna species are likely to utilise the vegetation here and it is recommended that a pre-construction habitat survey be conducted to identify if there are any animal breeding places prior to clearing, and a suitably qualified spotter-catcher shall be present during clearing activities. Where a breeding place is identified prior to clearing, a Species Management Program (SMP) will be required prior to undertaking any works. This is considered sufficient in mitigating any potential impacts on native fauna.

Northern Ecology | MSC Planning Scheme Assessment - 8 Victor Place, Kuranda | October 2023

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An assessment has been conducted against the MSES wildlife habitat criteria in S.8.2.4 - Environmental Significance Overlay Code of the *MSC Planning Scheme 2016*, shown in Table 1 below.

Table 1: Assessment criteria for development within MSES wildlife habitat

Performance outcome	Acceptable outcomes	Applicability to site
<p>PO5 Development within a 'Wildlife habitat' area identified on the Environmental Significance Overlay Maps (OM-004a-o):</p> <p>(a) protects and enhances the habitat of Endangered, Vulnerable and Near Threatened (EVNT) species and local species of significance;</p> <p>(b) incorporates siting and design measures to protect and retain identified ecological values and underlying ecosystem processes within or adjacent to the development site;</p> <p>(c) maintains or enhances wildlife interconnectivity at a local and regional scale; and</p> <p>(d) mitigates the impact of other forms of potential disturbance (such as presence of vehicles, pedestrian use, increased exposure to domestic animals, noise, and lighting impacts) to protect critical life stage ecological processes (such as feeding, breeding or roosting).</p>	<p>AO5 No acceptable outcome is provided</p>	<p>No Critically Endangered, Endangered, Vulnerable or Near Threatened fauna species were recorded within the Project footprint. However, it is possible they may utilise the resources and habitat within the site, though for many species this is likely to be in a transitory manner.</p> <p>There are no unique ecological values within the Project footprint that are not present in larger extent in the surrounding landscape and there are no specific connectivity values given the Project footprint is part of a large, contiguous habitat areas.</p> <p>Mitigation measures to minimise potential impacts include, avoiding clearing between October-November to avoid potential impacts to the flute nosed bat (<i>Murina florium</i>), where practicable completing works within the dry season months (May-August) to minimise impacts to migratory birds, completing pre-construction habitat assessment (where an animal breeding place is identified an SMP will be prepared prior to works commencing), having a spotter-catcher present during clearing activities (if during works an animal breeding place is identified, works will cease until an SMP is received), demarcating the clearing area to avoid inadvertent clearing and restricting construction hours between 7am-5pm to reduce the impacts of noise on wildlife.</p> <p>Project can comply with PO5.</p>

Results from the assessment demonstrate the performance outcome relating to the MSES wildlife habitat can be achieved where appropriate mitigation measures are implemented (refer Northern Ecology, 2023).

REFERENCES

Northern Ecology (2023) *Ecological Assessment Report: Lot 8 on Plan RP861072, Kuranda*. Consultant report prepared for Clayton Crowe, 10th October 2023.

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 is 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 an 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.