



**PLANNING VOTES OF THE ORDINARY MEETING OF KEMPSEY SHIRE COUNCIL**

18 December 2012 commencing at 9.02am.

**1.5 Proposed Rural Tourist Facility, Oyster Aquaculture Facility and Nine Lot Subdivision** File: T6-12-80

1412?	RBP
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**SUMMARY**

Reporting that Council has received a Development Application for rural tourist facility, oyster aquaculture facility and nine (9) lot subdivision at Rainbow Reach, for which objections have been received.

Applicant: Global Adobe Pty Ltd  
 Subject Property: Lots 73, 77, 78, 79 and Lot 80 DP752409 and Crown Land (part-bed of Balls Inlet)  
 462-512 Rainbow Reach Road, Rainbow Reach  
 Zone: 1(a1) (Rural "A1" Zone)

**MOVED:** *Moved: Cl. Green  
 Seconded: Cl. Morris*

**That this matter be listed for works inspection.**

**A Division resulted in the following votes.**

**F = Voted For  
 A = Voted Against**

Campbell	A	Green	F	Kesby	F	McGinn	A
Morris	F	Patterson	A	Saul	A		

**The MOTION was PUT to the Meeting and was LOST.**

**2012. 379 RESOLVED:** *Moved: Cl. Saul  
 Seconded: Cl. Morris*

**A That consent be granted subject to the following conditions:**

**PARAMETERS OF THIS CONSENT**

**1 The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.**

<b>Plan No./ Supporting Document</b>	<b>Version</b>	<b>Prepared by</b>	<b>Dated</b>
<b>Site Plan and proposed Subdivision SHT1 (ref: DWG SP001)</b>	-	<b>Global Adobe Pty Ltd</b>	<b>28.05.2012</b>
<b>Site Plan and proposed Subdivision SHT1 (ref: DWG SP002)</b>	-	<b>Global Adobe Pty Ltd</b>	<b>28.05.2012</b>
<b>Site Plan and proposed Subdivision SHT3 (ref: DWG SP003)</b>	-	<b>Global Adobe Pty Ltd</b>	<b>28.05.2012</b>
<b>LODGE SITE PLAN (SHEET No. A02/B – JOB No. C2806)</b>	<b>D (Revision by Peter Yarwood)</b>	<b>ceo architectural cad design + presentation</b>	<b>1/12/2011</b>
<b>MAIN LODGE ELEVATIONS (SHEET No. A04/B – JOB No. C2806)</b>	<b>D (Revision by Peter Yarwood)</b>	<b>ceo architectural cad design + presentation</b>	<b>1/12/2011</b>
<b>LODGE FLOOR PLAN (SHEET No. A03/B – JOB No. C2806)</b>	<b>D (Revision by Peter Yarwood)</b>	<b>ceo architectural cad design + presentation</b>	<b>1/12/2011</b>
<b>PAVILLION 2 ELEVS &amp; SECTIONS (SHEET No. A06 – JOB No. C2806)</b>	<b>D</b>	<b>ceo architectural cad design + presentation</b>	<b>4 Dec 2008</b>
<b>AQUA SHED PLAN AND ELEVATIONS (SHEET No. A07 – JOB No. C2806)</b>	<b>D</b>	<b>ceo architectural cad design + presentation</b>	<b>4 Dec 2008</b>
<b>Typical Jetty Detail (ref: DWG D004)</b>	-	<b>Global Adobe Pty Ltd</b>	<b>28.05.2012</b>

**In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.**

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

- 2 All building work must be carried out in accordance with the requirements of the Building Code of Australia as in force on the date the application for the relevant construction certificate or complying development certificate was made.**

**This condition does not apply:**

- a) To the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4), or**

- b) To the erection of a temporary building.
- 3 This consent does not permit commencement of any site works. Works are not to commence until such time as a Construction Certificate has been obtained and the appointment of a Principal Certifying Authority.
- 4 This consent does not permit any works within any mapped *State Environmental Planning Policy (SEPP) No. 14 – Coastal Wetlands* area, including any building works, any filling or excavation works, any drainage works, the construction of any levee, and/or the discharge of and effluent or stormwater towards or within a mapped *SEPP No. 14* area.

**THE FOLLOWING CONDITIONS ARE TO BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY CONSTRUCTION CERTIFICATE**

- 5 Prior to the issue of any Construction Certificate, engineer's details for all proposed works, including structural, foundation, cut and fill, retaining walls, driveway and car parking area pavement, etc., shall be provided to the Principal Certifying Authority for approval. All engineer's details must be prepared by an appropriately qualified, experienced and practicing Engineer in accordance with Council's *Development Control Plan No. 36* and the current Building Code of Australia. All engineer's details shall be approved by the Principal Certifying Authority as part of any Construction Certificate.
- 6 Prior to the issue of any Construction Certificate, certification that all approved works have been designed so as to be capable of withstanding flood forces up to and including the 1% AEP flood event shall be provided to the Principal Certifying Authority for approval. This certification shall account for the impacts of any flotsam (carried by floodwaters). Velocities to be adopted for the calculation of forces created by flood waters and debris loading are to be at least three (3) times the velocities determined in Council's current Flood Management Study for the 1% AEP flood event. For the purpose of this certification the 1% AEP flood level may be assumed to be RL 3.25 metres AHD. This certification shall be prepared by a qualified practising civil or structural engineer. This certification shall be approved by the Principal Certifying Authority as part of any Construction Certificate.
- 7 Prior to the issue of any Construction Certificate, a Flood Evacuation Plan for the approved rural tourist facility shall be provided to the Principal Certifying Authority for approval. The Flood Evacuation Plan shall be prepared and certified by a suitably qualified and currently practicing professional in accordance with all relevant standards and industry guidelines, and shall demonstrate (but not be limited to) the following:
- a) Evacuation triggers and timeframes for a range of floods up to and including the probable maximum flood (PMF);
  - b) Evacuation route/s (including alternative emergency route options);

- c) **Officers/persons responsible for monitoring, initiating and carrying out all evacuation procedures, including their required qualification and training;**
- d) **Signage to be installed throughout the development detailing evacuation procedures;**
- e) **The effects of climate change considering the current scientific data available from the Intergovernmental Panel on Climate Change (IPCC); and**
- f) **Process for the annual review and update of the Flood Evacuation Plan.**

**The Flood Evacuation Plan shall be approved by the Principal Certifying Authority as part of any Construction Certificate.**

- 8 **Prior to the issue of any Construction Certificate, an approval under Section 138 of the *Roads Act 1993* shall be obtained from Council for all necessary works within the road reserve. Three (3) copies of engineering construction plans shall accompany the application for consent for works within the road reserve. Such plans shall be in accordance with Council's Adopted Engineering Standard. This approval shall be approved by the Principal Certifying Authority as part of any Construction Certificate.**
- 9 **An approval under Section 68 of the *Local Government Act 1993* to carry out water supply work shall be obtained from Council and provided to the Principal Certifying Authority prior to the issue of any Construction Certificate. This approval shall be approved by the Principal Certifying Authority as part of any Construction Certificate.**
- 10 **Prior to the issue of any Construction Certificate, an Acid Sulfate Soil Management Plan shall be provided to the Principal Certifying Authority for approval. This Acid Sulfate Soil Management Plan shall demonstrate the measures to be employed to manage disturbance of acid sulfate soils on the site in accordance with *Acid Sulfate Soil Manual (NSW ASSMAC 1998)*. This Acid Sulfate Soil Management Plan shall be approved by the Principal Certifying Authority as part of any Construction Certificate.**
- 11 **Prior to the issue of any Construction Certificate, a Sediment and Erosion Control Plan shall be submitted to the Principal Certifying Authority for approval. This Sediment and Erosion Control Plan shall be prepared by an appropriately experienced and qualified professional, in accordance with the most recent version of the Landcom publication "*Managing Urban Stormwater - Soils and Construction*." The Sediment and Erosion Control Plan shall include measures to manage weeds in and around the construction areas. This Sediment and Erosion Control Plan shall be approved by the Principal Certifying Authority as part of any Construction Certificate.**
- 12 **Prior to the issue of any Construction Certificate, an approval under Section 68 of the *Local Government Act 1993* for on-site effluent disposal shall be obtained from Council. The application for Section 68 approval shall be accompanied by an Effluent Disposal Management Plan prepared by a suitably qualified professional with demonstrated experience in effluent disposal matters, which**

addresses the site specific design of sewage management in accordance with the requirements of the *Local Government Act 1993*, the Regulations and relevant guidelines.

In accordance with the advice from NSW Department of Industry and Investment, the installation of the onsite sewage management system shall be a minimum NSW Health approved composting toilets for black-water and with textile-filter system with disinfection for grey-water. The black-water composting toilets and grey-water treatment system shall be wholly above the 1% AEP flood level, and the treated grey-water disposal area is required to be above the 5% AEP flood level. The physical and chemical properties of all fill material shall be provided with the Section 68 application, demonstrating that the material is capable of adequately disposing of the treated grey-water. Details of the design, installation, management and ongoing maintenance of these systems (including before, during and after a flood event) shall be provided with the Section 68 application. All components of all systems shall be adequately flood proofed.

- 13 Creation of a Restriction-as-to-User pursuant to Section 88B of the Conveyancing Act 1919 providing that any on-site effluent disposal system on the proposed aquaculture development/lots shall be in accordance with the required Effluent Disposal Management Plan. Such restriction shall identify Kempsey Shire Council as the sole party to modify or vary and shall accompany any application for a Subdivision Certificate.
- 14 Prior to the issue of any Construction Certificate, stormwater drainage engineer's details for the provision of a stormwater drainage system to convey all existing and proposed stormwater flows through this development shall be submitted to Principal Certifying Authority for approval. These stormwater drainage engineer's details shall be prepared by an appropriately experienced, qualified and practicing Civil Engineer in accordance with Council's Adopted Engineering Standard, the most recent version of *Australian Rainfall and Runoff (1987)*, and AS/NZS 3500.3:2003 - *Plumbing and drainage, Part 3: Stormwater drainage*. The stormwater drainage system shall be designed for 1 in 10 year storm event. All piped drainage lines over adjoining land are to be located within drainage easements. All such stormwater drainage engineer's details shall be approved by the Principal Certifying Authority as part of any Construction Certificate.
- 15 Creation of a Restriction-as-to-User pursuant to Section 88B of the Conveyancing Act 1919 providing that any on-site effluent disposal system on the proposed aquaculture development/lots shall be in accordance with the required Effluent Management Plan. Such restriction shall identify Kempsey Shire council as the sole party to vary or modify and shall accompany any application for a Subdivision Certificate.
- 16 Prior to the issue of any Construction Certificate, a Water Supply Management Plan shall be submitted to the Principal Certifying Authority for approval. This Water Supply Management Plan shall be prepared in accordance with Section 4.1 and Section 10 of the NSW Health *Private Water Supply Guidelines*, and demonstrate that the proposed drinking water supply will comply with the "Australian Drinking Water Guidelines – 1996". This Water Supply Management

**Plan shall be approved by the Principal Certifying Authority as part of any Construction Certificate.**

- 17** Prior to the issue of any Construction Certificate, details for the design and fitout of all food preparation areas shall be submitted to the Principal Certifying Authority for approval. These details shall include a floor plan at a scale of 1:50, and shall demonstrate compliance with *AS 4674-2004: Design, construction and fitout of food premises*. All such details shall be approved by the Principal Certifying Authority as part of any Construction Certificate.
- 18** Prior to the issue of any Construction Certificate, plans and specifications detailing implementation of mosquito and biting insect management shall be submitted to the Principal Certifying Authority for approval. These plans and specifications shall demonstrate measures employed to minimised human exposure to mosquito and biting insects throughout the development and limit potential breeding sites in the vicinity, in accordance with the relevant requirements and guidelines of NSW Health. These plans and specifications shall be approved by the Principal Certifying Authority as part of any Construction Certificate.
- 19** Prior to the issue of any Construction Certificate, a validation report shall be submitted to the Principal Certifying Authority demonstrating that all asbestos and other toxic substances have been removed from the site, and the site has been fully remediated. The validation report shall be prepared by an appropriately qualified environmental consultant in accordance with *State Environmental Planning Policy No. 55 – Remediation of Land* and all relevant guidelines. This validation report shall be approved by the Principal Certifying Authority as part of any Construction Certificate.
- 20** Prior to the issue of any Construction Certificate, protective embankment measures and details for the waterfronts of Lots 1, 2, 3, 4, 5, 6, 7 & 80A shall be submitted to the Principal Certifying Authority for approval. These protective embankment measures and details shall be prepared by a qualified environmental consultant and shall demonstrate how erosion caused by boat wash and tidal movement will be prevented, given that these areas will lack natural vegetative protection due to the approved development. These protective embankment measures and details shall be approved by the Principal Certifying Authority as part of any Construction Certificate.
- 21** Prior to the issue of any Construction Certificate, application shall be made to the NSW Roads and Maritime Service (RMS) for Balls Inlet to be zoned as a four (4) knot zone (ie: a no wake zone). A copy of this application shall be provided to the Principal Certifying Authority prior to the issue of any Construction Certificate.

***Note: Preliminary contact from Council to the RMS have indicated that such speed restrictions would likely be supported by RMS.***

- 22** The particulars of the contributions levied pursuant to Section 94 of the Act are set out in the following table:

The specific public amenity or service in respect of which the condition is imposed.	The contributions plan under which the condition is imposed	Date of contributions plan
Local Roads and Traffic Infrastructure (Catchment 10)	Local Roads and Traffic Infrastructure Developer Contribution Plan 2009	January 2010
Public Domain	Kempsey Town Centre Public Domain Section 94 Development Contribution Plan	August 2010
Outdoor Recreation	Outdoor Recreation 2001	September 2001
Section 94 – Project Administration	Project Administration	10 August 2007

The above plans may be viewed during office hours at the Council Customer First Centre located at 22 Tozer Street West Kempsey.

Prior to the issue of any Construction Certificate the Principal Certifying Authority shall ensure that the contributions set out in the following Schedule have been paid to Council. The following contributions are current at the date of this consent. The contributions payable shall be adjusted in accordance with the relevant plan and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment. The contribution rates for specific dates are available from Council offices during office hours. Payments shall only be accepted by cash or bank cheque.

Schedule of Contributions pursuant to Section 94 of the Environmental Planning and Assessment Act 1979:

Public amenity or service	Unit type	No. of Units	Contribution Rate (Amount per Unit)	Contribution Levied	Date until which Contribution rate is applicable
Roads and Traffic Infrastructure (Catchment 10)	EP	5.4	\$1,415.00	\$7,641.00	30 June 2013
Public Domain	EP	5.4	\$412.00	\$2,224.80	30 June 2013
Open Space	ET	5.94	\$2,363.00	\$14,036.20	30 June 2013
Sub total				\$23,902.00	
S94 Administration	6% of total Section 94 charge applicable			\$1,434.10	30 June 2013
TOTAL				\$25,336.10	

- 23 Prior to the issue of any Construction Certificate a Certificate of Compliance pursuant of Section 305 of the *Water Management Act 2000* shall be obtained from Council and provided to the Principal Certifying Authority. This Certificate of Compliance shall be approved by the Principal Certifying Authority as part of any Construction Certificate.

Please refer to the Advice section of consent for additional information on water supply works and contributions.

- 24 Prior to the issue of any Construction Certificate the Principal Certifying Authority shall ensure that a Long Service Levy has been paid to the Long Service Payments Corporation. The amount payable is currently based on 0.35% of the cost of the work. This is a State Government Levy and is subject to change without notice. The requirements of the State Government supersede this condition.

This payment may be made at Council's Customer Service Centre. Cheques shall be made payable to Kempsey Shire Council.

- 25 Prior to the issue of any Construction Certificate details demonstrating full compliance with all General Terms of Approval shall be provided to the Principal Certifying Authority for approval. These details shall be approved by the Principal Certifying Authority as part of any Construction Certificate.

**THE FOLLOWING CONDITIONS ARE TO BE COMPLIED WITH PRIOR TO ANY WORKS COMMENCING**

- 26 Council shall be notified of the commencement of works not less than two (2) days prior to any works commencing. The two (2) day notification to Council shall be in writing and specify the date of commencement.
- 27 Prior to any works commencing evidence shall be provided to the Principal Certifying Authority of public liability insurance cover for a minimum of \$20 million. Council shall be nominated as an interested party on the policy.
- 28 Operational areas within the tourist facility APZ and within the boundaries of proposed lots 1 to 7 shall be clearly identified onsite. All materials, goods, vehicles, and temporary buildings shall be stored, parked, placed or kept only within these operational areas.
- 29 Prior to the commencement of any works the areas to be cleared shall be clearly marked/flagged/fenced by a qualified ecologist. Site induction of all workers shall specify that no clearing is to occur beyond the marked/flagged/fenced area.
- 30 Prior to the commencement of any works a sign or signs shall be erected in a prominent position at the frontage to the site:
- a) Showing the name, address and telephone number of the Principal Certifying Authority (PCA) for the work;
  - b) Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
  - c) Stating that unauthorised entry to the work site is prohibited.

The sign/s shall be maintained while the building work, subdivision work or demolition work is being carried out, and shall be removed when the work has been completed. No sign is to have an area in excess of one (1) m<sup>2</sup>.



- 31 Prior to the commencement of any works toilet facilities shall be provided or made available at or in the vicinity of the work site at a rate of one toilet for every 20 persons (or part of 20 persons) employed at the site. Each toilet provided shall be a flushing toilet connected to a Council approved onsite sewage management system, or to an approved temporary chemical water closet.**
- 32 All controls shall be in place in accordance with the approved Erosion and Sediment Control Plan.**
- 33 All controls shall be in place in accordance with the approved Acid Sulfate Soil Management Plan.**

**THE FOLLOWING CONDITIONS ARE TO BE COMPLIED WITH DURING ANY WORKS**

- 34 The public liability insurance cover required by this consent shall be maintained for the duration of the period of all works and during any maintenance period.**
- 35 An Aboriginal Field Officer from the NSW National Parks and Wildlife Service and/or the Kempsey Local Aboriginal Land Council shall be present during all earthworks.**
- 36 All clearing of vegetation shall be directed by a qualified ecologist. Only those trees identified by the ecologist shall be removed. Should any fauna be identified all works shall cease and shall not recommence until the fauna has been recovered by the ecologist and any injury to the fauna treated. The marking/flagging/fencing shall remain until all clearing and construction is completed.**
- 37 All materials, goods, vehicles, and temporary buildings shall be stored, parked, placed or kept only within the operational areas. No person or vehicle shall traverse any area on the site except these operational areas and the existing access roads when travelling between these operational areas and the public road.**
- 38 Construction works must not unreasonably interfere with the amenity of the neighbourhood. In particular construction noise, when audible on adjoining residential premises, can only occur:
  - a) Monday to Friday, from 7:00 am to 6:00 pm.**
  - b) Saturday, from 8:00 am to 1:00 pm.****

**No construction work is to take place on Sundays or Public Holidays.**

- 39 Construction noise is to be limited as follows:
  - a) For construction periods of four (4) weeks and under, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation shall not exceed the background level by more than 20 dB(A); or**
  - b) For construction periods greater than four (4) weeks and not exceeding twenty-six (26) weeks, the L10 noise level measured over a period of not less than fifteen (15) minutes****

when the construction site is in operation shall not exceed the background level by more than 10 dB(A).

- 40 All erosion and sediment controls shall be maintained at all times in accordance with the approved Erosion and Sediment Control Plan until the site has been stabilised by permanent vegetation or hard surface.
- 41 All builders rubbish is to be contained on the site in a 'Builders Skips' or an enclosure. Building materials are to be delivered directly onto the property. Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.
- 42 A survey certificate prepared by a registered surveyor is to be submitted to the Principal Certifying Authority upon completion of the floor slab formwork, before concrete is poured, to ensure all buildings will be constructed with a minimum finished floor level of 3.75 metres AHD in accordance with this development consent.
- 43 All approved plantings around the carpark, western side of the tourist facility, along the edge of access roads where they pass through or by saltmarsh, and east of Lots 1, 2, 3, 4, 5, 6 & 7 shall be established so as to provide a buffer to saltmarsh. Such plantings shall comprise Swamp Oak trees, either transplanted from vegetation proposed to be modified/cleared for APZs, or propagated. Plantings along the roads may consist of single trees due to the limited width of the road. Plantings in the buffer to Lot 1, 2, 3, 4, 5, 6 & 7 shall be at least two (2) trees wide (minimum 5m band).

**THE FOLLOWING CONDITIONS ARE TO BE COMPLIED WITH PRIOR TO THE OCCUPATION/USE OF ANY PART OF THE DEVELOPMENT**

- 44 Prior to the occupation/use of any part of the development and/or the issue of any Occupation Certificate, written evidence from Council shall be submitted to the Principal Certifying Authority demonstrating that Council is satisfied that any and all required works within the road reserve have been completed in full. Council shall not issue such written evidence until it is satisfied that all required works have been completed in full in accordance with an approval under Section 138 of the *Roads Act 1993* and all accompanying approved plans and details.
- 45 Prior to the occupation/use of any part of the development and/or the issue of any Occupation Certificate, written evidence from Council shall be provided to the Principal Certifying Authority demonstrating that Council is satisfied that all required water works have been completed in full. Council shall not issue such written evidence until it is satisfied that all required water works have been completed in full, in accordance with relevant approvals under Section 68 of the *Local Government Act 1993* and all accompanying approved plans and details.
- 46 Prior to the occupation/use of any part of the development and/or the issue of any Occupation Certificate, stormwater shall be adequately collected and disposed of in a controlled manner in

accordance with the approved stormwater drainage engineer's details.

- 47 Prior to the occupation/use of any part of the development and/or the issue of any Occupation Certificate, the approved on-site effluent management systems shall be completed in accordance with approved plans and current specifications and standards. These systems shall not be used and/or operated until a Council Officer has inspected the system and authorised its use.
- 48 Prior to the occupation/use of any part of the development and/or the issue of any Occupation Certificate, all landscaping shown on the approved plans shall be completed in full.
- 49 Prior to the occupation/use of any part of the development and/or the issue of any Occupation Certificate, all fences required by this consent to protect trees in the vicinity of the works shall be removed. No fences shall be removed until all works (including any rectification works) have been completed.
- 50 Prior to the occupation/use of any part of the development and/or the issue of any Occupation Certificate, evidence shall be provided to the Principal Certifying Authority demonstrating that all relevant General Terms of Approval have been completed.
- 51 Prior to the occupation/use of any part of the development and/or the issue of any Occupation Certificate, written evidence from Council shall be provided to the Principal Certifying Authority demonstrating that Council is satisfied that all infrastructure is maintained/repared to pre-development conditions and that no further work is to be carried out that may result in damage to Council's roads, footpaths, services, etc. Council shall not issue such written evidence until such time as evidence has been provided to Council indicating the pre development condition of the surrounding public land and infrastructure. Such evidence must include photographs. The proponent will be held responsible for the repair of any damage to roads, kerb and gutters, footpaths, driveway crossovers or other assets caused as a result of construction works under this consent.
- 52 Prior to the occupation/use of any part of the development and/or the issue of any Occupation Certificate, all of the works shown on the plans and granted by this consent, including any other consent that is necessary for the completion of this development, and any rectification works to damaged Council land or infrastructure, have been completed in full and approved by the Principal Certifying Authority and any other relevant consent authority/s.

**THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH PRIOR TO ISSUE OF ANY SUBDIVISION CERTIFICATE**

- 53 Prior to the issue of any Subdivision Certificate the final Occupation Certificates for each approved structure shall be provided to Council, including the approved rural tourist facility and all seven (7) of the approved oyster aquaculture facility buildings.
- 54 Prior to the issue of any Subdivision Certificate for the seven (7) aquaculture lots evidence shall be provided to Council

demonstrating that the oyster co-operative has been established. Such evidence shall include:

- a) A detailed business plan demonstrating the business structure, operational guidelines, and economic structure of the oyster co-operative are consistent with the terms of this consent;
- b) The by-laws of the oyster co-operative, indicating consistency with the terms of this consent;
- c) Evidence that the oyster co-operative has been registered and that sufficient shares exist for allocation to the owners of Lots 1 to 7 inclusive;
- d) Evidence that oyster co-operative holds not less than twelve (12) hectares of oyster leases or as otherwise justified by the required business plan. All oyster leases shall be within the immediate vicinity of the development, and shall be legal leases authorised/approved by NSW Department of Primary Industries;
- e) That the owners of the aquaculture lots are the exclusive holders of the shares in the co-operative and that no other party has the rights to operate or have any financial interest in the leases held by the co-operative; and
- f) Details of measures incorporated in the terms of membership of the cooperative, that each shareholder shall be required to maintain active involvement in the production of oysters.

55 Prior to the issue of any Subdivision Certificate an application for a Subdivision Certificate shall made on the approved form. The Subdivision Certificate application fees, in accordance with Council's adopted schedule of fees and charges, shall accompany such application. Seven (7) copies of the plan of subdivision shall be submitted with the application for a Subdivision Certificate. The location of all buildings and/or other permanent improvements including fences and internal access driveways/roads shall be indicated on one (1) of the copies.

A Section 88B Instrument and one (1) copy are to be submitted with the application for a Subdivision Certificate. The final plan of subdivision and accompanying Section 88B Instrument are to provide for the items listed in the following table:

Item for inclusion in Plan of Subdivision and/or Section 88B Instrument	Details of Item
Lots to be used only for the purpose of oyster aquaculture	The creation of restrictive covenants to restrict the use of Lots 1, 2, 3, 4, 5, 6 & 7 for the purpose of oyster aquaculture. This restriction shall be in favour of Council and shall identify Council as the sole party to vary the restriction.
Prohibit any dwelling or any temporary residential use	The creation of restrictive covenants to prohibit any dwelling and/or any temporary residential uses on Lots 1, 2, 3, 4, 5, 6, 7 & 80A. This

Item for inclusion in Plan of Subdivision and/or Section 88B Instrument	Details of Item
	restriction shall be in favour of Council and shall identify Council as the sole party to vary the restriction.
Easements and restrictions for bush fire protection purposes	The creation of any appropriate or necessary easements or restrictions to ensure compliance with the "General Terms of Approval" issued by the NSW Rural Fire Service, as provided by this consent. The instrument shall burden proposed allotments as is appropriate, to the satisfaction of Council. The instrument shall identify Council as the sole party to vary the restriction.
Rights of carriageway	The creation of any necessary rights of carriageway to achieve legal and practical access to all lots. The instrument shall benefit and burden proposed allotments and parties as is appropriate, to the satisfaction of Council.
Easement for electricity or telecommunications	The creation of any necessary easements for electricity or telecommunication purposes as required by the relevant supply authority. The instrument shall benefit the relevant supply authority and burden proposed allotments as is appropriate, to the satisfaction of Council.
Easements for services	The creation of any necessary easements for services. The instrument shall benefit and burden proposed allotments and parties as is appropriate, to the satisfaction of Council.
Easements for disposal of effluent and/or stormwater	The creation of any necessary easements for the disposal of effluent and/or stormwater. The instrument shall benefit and burden proposed allotments and parties as is appropriate, to the satisfaction of Council.

- 56 Prior to the issue of any Subdivision Certificate a certificate from a registered surveyor shall be submitted to Council certifying that all pipelines, structures, access driveways and/or services are located wholly within the relevant easements.
- 57 Prior to the issue of any Subdivision Certificate written evidence from the electricity supply authority (which is Essential Energy at the time this consent was issued) stating that satisfactory arrangements have been made for the provision of underground electricity supply throughout the subdivision shall be provided to Council.
- 58 Prior to the issue of any Subdivision Certificate written evidence from the telecommunication authority (which is Telstra at the time this consent was issued) stating that satisfactory arrangements have been made for the provision of underground telephone supply throughout the subdivision shall be provided to Council.
- 59 Prior to the issue of any Subdivision Certificate evidence shall be provided to Council demonstrating that all relevant General Terms of Approval have been completed.

**THE FOLLOWING CONDITIONS ARE TO BE COMPLIED WITH AT ALL TIMES**

- 60** Lots 1, 2, 3, 4, 5, 6 and 7 shall only be used for the purpose of oyster aquaculture. These lots shall not be used for any purpose (other than oyster aquaculture) at any time.
- 61** No dwelling is permitted on Lots 1, 2, 3, 4, 5, 6, 7, and/or 80A at any time.
- 62** All works, measures, and commitments as specified in the approved Flood Evacuation Plan shall be implemented and undertaken in perpetuity of the development.

The Flood Evacuation Plan shall be reviewed annually and/or after a flood event. The review shall be undertaken by a suitably qualified and practicing consultant, and shall include (but not be limited to) the following:

- a) Identify any changes made to the plan and provide a copy of the updated plan;
- b) All contact details contained within the plan are current;
- c) Flood levels in the plan are current;
- d) Certification that all requirements of the plan have been implemented; and
- e) The effects of climate change considering the current scientific data available from the Intergovernmental Panel on Climate Change (IPCC).

The reviewed Flood Evacuation Plan shall be submitted to Council annually and/or after a flood event.

- 63** Any outdoor artificial lighting shall be limited to low luminosity and directed towards the closest building and downward. All external lights must be sensor-activated. Light shall not be directed into the surrounding vegetation at any time.
- 64** Cats and dogs are not permitted to be kept on proposed Lot 1, 2, 3, 4, 5, 6, 7, 80 or 80A at any time.

Livestock (including cattle, goats, sheep, horses, etc.) are not permitted to be kept on proposed Lot 1, 2, 3, 4, 5, 6, 7 or 80A at any time.

Livestock (including cattle, goats, sheep, horses, etc.) are permitted to be kept on proposed Lot 80, however must be restricted to the existing pastoral areas and are prohibited from entering:

- a) Any mapped SEPP No. 14 – Coastal Wetland;
- b) Any Endanger Ecological Community; and/or
- c) Any area containing Mangroves and/or Saltmarsh.

- 65 All landscaping as shown on the approved plans shall be maintained in a neat and tidy manner at all times.
- 66 All water supply and water supply infrastructure shall be maintained in accordance with the approved Water Supply Management Plan at all times.
- 67 All car parking areas shown on the approved plans shall be maintained and reserved for car parking at all times.
- 68 The following conditions of consent have been imposed by the NSW Department of Primary Industries as "general terms of approval" under Section 91 of the *Environmental Planning and Assessment Act 1979* and the *Fisheries Management Act 1994*, and shall be complied with at all times:
- a) Permits under s.201 and 205 of the FM Act are to be obtained from Fisheries NSW for all works associated with Jetty constructions, road crossing removal, and bank protection works. Permit application form are available at [www.dpi.nsw.gov.au/fisheries/habitat/permit](http://www.dpi.nsw.gov.au/fisheries/habitat/permit); and
  - b) Environmental safeguards (silt curtains, booms, etc.) are to be used during construction to ensure that there is no escape of turbid plumes into the aquatic environment. Turbid plumes have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms; and
  - c) The materials used for construction should not be deleterious to marine life, for example antifouling paints or treated woods must not be used. These materials inhibit marine growth and reduce habitat available to marine life; and
  - d) The proponent is required to consult with the local oyster industry directly in regards to construction activities and timing of works; and
  - e) All other relevant authorities have no objection to this proposal.
- 69 The following conditions of consent have been imposed by the NSW office of Water as "general terms of approval" under Section 91 of the *Environmental Planning and Assessment Act 1979* and the *Water Management Act 2000*, and shall be complied with at all times:

Number	Condition
<b>Plans, standards and guidelines</b>	
a)	Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the NSW Office of Water. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the estuary identified.
b)	The consent holder must prepare or commission the preparation of:

Number	Condition
	(i) Vegetation Management Plan (ii) Works Schedule (iii) Erosion and Sediment Control Plan (iv) Soil and Water Management Plan

**70** The following conditions of consent have been imposed by the NSW Rural Fire Service as “general terms of approval” under Section 91 of the *Environmental Planning and Assessment Act 1979* and the *Rural Fires Act 1997*, and shall be complied with at all times:

- a) The development proposal is to comply with the subdivision layout identified on the drawing titled “Site Plan and proposed Subdivision SHT1”, dated 28/5/12, DWG SP001 as provided to the NSW Rural Fire Service from Kempsey Shire Council on 31/8/12.

**Asset Protection Zones**

The intent of measures is to provide sufficient space for fire fighters and other emergency services personnel, ensuring radiant heat levels permit operations under critical conditions of radiant heat, smoke and embers, while supporting or evacuating occupants. To achieve this, the following conditions shall apply:

- b) Should the aquaculture subdivision be staged then a restriction to the land use, pursuant to section 88B of the 'Conveyancing Act 1919', shall be placed on all undeveloped allotments within the aquaculture subdivision requiring the provision of asset protection zones (APZ) as identified on the drawing prepared by Midcoast Building and Environment, located in Appendix 2 of their Bushfire Report dated March 2012 and titled “APZ Compliance Concept (ii) Aquaculture lots” . The APZ shall be managed, as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones', and be extinguished upon the land being developed as aquaculture allotments.

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following conditions shall apply:

- c) At the commencement of building works and in perpetuity asset protection zones (APZ) shall be provided, as detailed in Appendix 2 of the Bushfire Report prepared by Midcoast Building and Environment, dated March 2012 and identified as “APZ Compliance Concept (i) Eco-tourism Lodge”, around the eco-tourist development with the following modification;
- i) The APZ is to extend to the West and South-west of the carpark area to provide for a 45m wide APZ.



**APZs associated with the development shall be managed as outlined within section 4.2.7 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.**

#### **Water and Utilities**

**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:**

- d) In recognition that no reticulated water supply is available to the development, a total of 10,000litres fire fighting water supply shall be provided, for fire fighting purposes, for the eco-tourist lodge. The fire fighting water supply shall be installed and maintained in the following manner:**
  - i) Fire fighting water supply tank(s) shall be located not less than 5 metres and not more than 20 metres from the approved structure.**
  - ii) A hardened ground surface for fire fighting truck access is to be constructed up to and within 4 metres of the fire fighting water supply.**
  - iii) New above ground fire fighting water supply storage's are to be manufactured using non combustible material (concrete, metal, etc.). Where existing fire fighting water supply storage's are constructed of combustible (polycarbonate, plastic, fibreglass, etc.) materials, they shall be shielded from the impact of radiant heat and direct flame contact.**
  - iv) Non combustible materials (concrete, metal, etc.) will only be used to elevate or raise fire fighting water supply tank(s) above the natural ground level.**
  - v) A 65mm metal Storz outlet with a gate or ball valve shall be fitted to any fire fighting water supply tank(s) and accessible for a fire fighting truck. The Storz outlet fitting shall not be located facing the hazard or the approved structure.**
  - vi) The gate or ball valve, pipes and tank penetration are adequate for full 50mm inner diameter water flow through the Storz fitting and are constructed of a metal material.**
  - vii) All associated fittings to the fire fighting water supply tank(s) shall be non-combustible.**
  - viii) Any below ground fire fighting water supply tank(s) constructed of combustible (polycarbonate, plastic, fibreglass, etc) materials shall be shielded from the impact of radiant heat and direct flame contact.**

- ix) Any fire fighting water supply tank(s) located below ground shall be clearly delineated to prevent vehicles being driven over the tank.
- x) All water supplies for fire fighting purposes shall be clearly signposted as a fire fighting water supply.
- xi) Below ground fire fighting water supply tank(s) shall have an access hole measuring a minimum 200mm x 200mm to allow fire fighting trucks to access water direct from the tank.
- xii) Fire fighting water supply tank(s) and associated fittings, located within 60 metres of a bushfire hazard and on the hazard side of an approved building, shall be provided with radiant heat shielding to protect the tank from bush fire impacts and maintain safe access to the water supply for fire fighters.
- xiii) A minimum 5hp or 3kW petrol or diesel powered pump shall be made available to the water supply. A 19mm (internal diameter) fire hose and reel shall be connected to the pump. Fire hose reels must be installed so that each elevation of the building can be reached by a fire hose.
- xiv) Pumps are to be shielded from the direct impacts of bush fire.
- xv) A Static Water Supply (SWS) sign shall be obtained from the local NSW Rural Fire Service (RFS) and positioned for ease of identification by RFS personnel and other users of the SWS. In this regard:
  - Markers must be fixed in a suitable location so as to be highly visible; and
  - Markers should be positioned adjacent to the most appropriate access for the water supply.

**Note: Below ground dedicated fire fighting water supply tank(s) is defined as that no part of the tanks(s) is to be located above natural ground level.**

**The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following conditions shall apply:**

- e) Electricity and gas are to comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.

#### **Access**

**The intent of measures for public roads 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:**

- f) **Public road access shall comply with section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'.**

**The intent of measures for internal roads is to provide safe operational access for emergency services personnel in suppressing a bush fire, while residents are accessing or egressing an area. To achieve this, the following conditions shall apply:**

- g) **Internal roads, serving the Eco-tourist development, shall comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.**

#### **Design and Construction**

**The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:**

- h) **New construction shall comply with Sections 3 and 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.**
- i) **Roofing shall be gutterless or guttering and valleys are to be screened to prevent the build up of flammable material. Any materials used shall be non-combustible.**

#### **Landscaping**

- j) **Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.**

#### **General Advice – consent authority to note**

- **The aquaculture section of the subdivision, creating the seven (7) lots, should have access provided via a public road and not a property access road. As the subdivision is rural and there are more than three properties reliant upon the access, the NSW RFS recommends that access is provided via a public road.**
- **Any future development application lodged within this subdivision under section 79BA of the 'Environmental Planning & Assessment Act 1979' will be subject to requirements as set out in 'Planning for Bush Fire Protection 2006'.**

**The APZ proposed for the "eco-tourist" development identifies clearing of vegetation to the North-west, North and North-east of the development. The clearing of this vegetation, whilst providing compliance with PBP 2006, is greater than that required by Table A2.5 of PBP 2006 (15m). It should also be noted that the separation distance required by AS 3959-2009 between the eco-tourist development and the hazard (on level ground) is 21m.**

**The following bushfire-resisting timbers have been determined as being acceptable to withstand exposure up to BAL-29 conditions as per Australian Standard AS 3959-2009 'Construction of buildings in bush fire-prone areas' and are identified within Appendix F of the standard. These species include: Silvertop Ash, Blackbutt, River Red Gum, Spotted Gum, Red ironbark, Kwila (Merbau) and Turpentine.**

## ADVICE

- a) Certain additional approvals and action required by you prior to and during construction works. The *Environmental Planning and Assessment Act 1979* require you to:
- Obtain a Construction Certificate prior to the commencement of any works. An application may be lodged with Council, or you may apply to a private accredited certifier for a *Construction Certificate*. An accredited certifier must obtain Council's approval to certain conditions of this development consent, where indicated before issuing the Construction Certificate.
  - Nominate a *Principal Certifying Authority (PCA)* which may be either Council or an accredited certifier and notify Council of that appointment. You cannot lawfully commence works without complying with this requirement.
  - Give Council at least two (2) days notice of your intention to commence the erection of a building before commencing construction works by lodging the '*Notice of Commencement of Building Works and Appointment of the Principal Certifying Authority*' form enclosed. You cannot lawfully commence works without complying with this requirement.
  - Obtain an *Occupation Certificate* before commencing occupation or commencing to use the building or on the completion of other works including the erection of a sign by lodging the '*Application for Occupation Certificate*' form enclosed. You cannot lawfully commence occupation or the use of a building without complying with this requirement.
- b) Prior to the issue of any Construction Certificate a Certificate of Compliance pursuant of Section 305 of the *Water Management Act 2000* shall be obtained from Council and submitted to the Principal Certifying Authority.

A Certificate of Compliance shall be issued by Council when all contributions are paid in full and all infrastructure necessary to service the development has been completed in full.

Contributions set out in the following table are to be paid to Council prior to the issue of any Certificate of Compliance. Contributions are levied in accordance with Council's Kempsey Shire Council Macleay Water DSP for Water dated July 2006. The Plans may be viewed during office hours at Council's Offices.

The contributions payable will be adjusted in accordance with relevant plan and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment. Payments will only be accepted by cash or bank cheque.

The Certificate of Compliance under Section 306 of the *Water Management Act 2000*, identifying payment of the contributions, is to be provided to the Principal Certifying Authority prior to the issue of any Construction Certificate.

Public service	No. of Equivalent Tenements	Contribution Rate (Amount per ET)	Contribution Levied	Date until which Contribution rate is applicable	Office Use Only Receipting Codes
Water	1.722	\$8,797.00	\$15,148.40	30 June 2013	AW
<b>TOTAL</b>			<b>\$15,148.40</b>		

**Please note:**

- The above contributions are calculated for the oyster aquaculture sheds only; it is assumed that the tourist facility will not be able to be connected to Council's water supply due to the presence of SEPP No. 14 wetlands. If in the future approval is gained to connect the tourist facility to Council's water supply then an additional 3.2 ET contribution will be required (0.4 ET per room x 8 rooms), in addition to the construction of any necessary water infrastructure; and
  - At this stage it has not been advised whether proposed Lot 80 will be connected to water supply. If water supply is connected to proposed Lot 80 then an additional 1 ET contribution will be required, in addition to the construction of any necessary water infrastructure.
- c) This consent does not authorise clearing of native vegetation under the *Native Vegetation Act 2003*. Application for clearing of native vegetation under the *Native Vegetation Act 2003* must be made to the NSW Catchment Management Authority prior to the clearing of any native vegetation.
- In addition, if the proposal could affect any *Environmental Protection and Biodiversity Conservation Act 1999* listed threatened species it may be necessary to gain approval from the Australian Government's Department of Sustainability, Environment, Water, Population and Communities prior to the commencement of any works (including any clearing of vegetation).
- d) All earthmoving contractors and operators should be instructed that, in the event of any bone, or stone artefacts, or discrete distributions of shell, being unearthed during earthmoving, work must cease immediately in the affected area, and the Local Aboriginal Land Council and officers of the National Parks and Wildlife Service, informed of the discovery. Work must not recommence until the material has been inspected by those officials and permission has been given to proceed. Those failing to report a discovery and those responsible for the damage or destruction occasioned by unauthorised removal or alteration to a site or to archaeological material may be prosecuted under the *National Parks and Wildlife Act 1974*.
- B** That the objectors be notified of Council's decision.
- C** That a tour of the proposed facility by Councillors be arranged with the applicant.

**A Division resulted in the following votes.**

**F = Voted For**

**A = Voted Against**

<b>Campbell</b>	<b>F</b>	<b>Green</b>	<b>F</b>	<b>Kesby</b>	<b>F</b>	<b>McGinn</b>	<b>F</b>
<b>Morris</b>	<b>F</b>	<b>Patterson</b>	<b>F</b>	<b>Saul</b>	<b>F</b>		

**The Mayor noted that the forgoing resolution was passed UNANIMOUSLY.**

**1.4 Proposed Multiple Dwellings at Smithtown File: T6-12-212**

1412	RBP
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**SUMMARY**

Reporting that Council has received a Development Application for two dwellings at Smithtown which is contrary to the NSW Floodplain Development Manual, Council's Flood Policy and Development Control Plan No 22.

Applicant: Ralph & Sonia Walker  
Subject Property: Lot 2 DP1119708, 2 Croads Esplanade, Smithtown  
Zone: 2(v) (Village or Township Zone)

**2012. 393 RESOLVED:**

***Moved: Cl. Kesby  
Seconded: Cl. Morris***

**That this item be listed for works inspection.**

**A Division resulted in the following votes.**

**F = Voted For**

**A = Voted Against**

<b>Campbell</b>	<b>F</b>	<b>Green</b>	<b>F</b>	<b>Kesby</b>	<b>F</b>	<b>McGinn</b>	<b>F</b>
<b>Morris</b>	<b>F</b>	<b>Patterson</b>	<b>F</b>	<b>Saul</b>	<b>F</b>		