

L I C E N C E

File Reference

Crown Lands Act 1989 - Section 34A

Licence Number

17/10706

RI 591201

MINISTER

The Minister administering the Crown Lands Act 1989, (hereinafter referred to as the Minister)

grants to

LICENSEE name & address

TWEED SHIRE COUNCIL
Civic & Cultural Centre
Tumbulgum Rd
MURWILLUMBAH NSW 2484
(hereinafter referred to as the Holder)

a Licence pursuant to the provisions of Section 34A of the Crown Lands Act 1989 in respect of the land described hereunder in Parts 1 and 2 and subject to the terms and conditions contained in the following pages and Schedule 1, and in any additional Schedules or documents referred to in Schedule 1.

EXECUTION

dated this _____ day of _____ 20

THE MINISTER

_____ as delegate of the Minister

_____ name and position

THE HOLDER

In consideration of the grant of this Licence, the Company agrees to be bound by the terms, conditions and provisions of the Licence.

The Common Seal of was affixed in accordance with its articles of association in the presence of (See note below):

_____ signature

_____ signature

_____ print full name

_____ print full name

_____ position

_____ position

_____ date

_____ date

(Note: To be ruled through if executing this licence without seal - Corporations Law s. 127)

DESCRIPTION OF LANDS

PART 1

Local Govt. Area	TWEED		
County	ROUS		
Parish	CUDGEN		
Suburb	KINGSCLIFF		
Status:	Lot	Section	DP
Crown land located near	1	7	DP: 17606
Crown land located near	2	7	DP: 17606
Crown land located near	3	7	DP: 17606
Crown land located near	3		DP: 511812
Crown land located near	287		DP: 542598
Crown land located near	11		DP: 869230

PART 2

Plan/diagram: Schedule 3	Area: 1806m2
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TEXT DESCRIPTION: Crown Land below MHW of Cudgen Creek adjoining Lots 1, 2 and 3 Section 7 DP 17606, SP 61566, SP 16578, SP 88445, Lot 3 DP 511812, SP 20277, SP 65635, Lot 11 DP 869230, Lot 11 DP 573205, SP 73320, SP 52701, Lot 287 DP 542598 Marine Parade and Clough Way, comprising part Reserve 56146 from Sale or Lease Generally, part Reserve 1011268 for the public purpose of Future Public Requirements and part Reserve 1012191 for the public purpose of Access and Public Requirements, Rural Services, Tourism Purposes and Environmental and Heritage Conservation as shown by red hatched edge on Schedule 3.

Note - a Table of Contents appears at the end of this Licence (6.001)

***** End of Description of Land (Crown Land) *****

1. Definitions

In this Licence unless the contrary intention appears:

"CLA" means the Crown Lands Act 1989

"Commencement Date" means the date on which this Licence is stated to commence.

"Holder" means the person described as the Holder on the front page of this Licence.

"Improvements" means all buildings structures facilities works and pontoons situated on or in the land or which under the terms of this Licence are to be situated on or in the land.

"Land" means the land specified in Parts 1 and 2 of this Licence under the heading "DESCRIPTION OF LAND" (including any submerged land and waterway) or where the context so admits any part thereof.

"Licence" means this Licence including the Schedules and Annexures hereto.

"Minister" means the Minister referred to on the front page of this Licence as the Minister and where not repugnant to the context includes the Successors of Minister and the servants and agents of the Minister.

"Pontoon" means a floating landing stage.

"Premises" means the Land the Improvements and the Holder's Plant and where the context so permits any part of the foregoing.

"RA" means the Roads Act 1993

"Rent" means the rent provided for in this Licence.

"Term" means the period commencing on the "Commencement Date" and terminating on the "Termination Date".

"Termination Date" means the date on which the Licence is revoked or ceases to have effect in accordance with the provision of this Licence. (6.002)

2. Plurals and Genders

- (a) Words importing the singular number shall include the plural and vice versa.
- (b) Words importing the masculine gender shall include the feminine or neuter and vice versa.
- (c) Any reference to a person shall be deemed to include a reference to a corporation and vice versa. (6.004)

3. Contra Proferentum

No rules of construction shall apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this Licence or any part of it. (6.005)

4. Headings Plans and Code Numbers

- (a) Headings (and subheadings within clauses) marginal notes the matter appearing in Column 1 of Schedule 1 and the Table of Contents have been inserted for guidance only and shall be deemed not to form any part of the Licence.
- (b) Any plan or diagram attached or annexed to this licence, which purports to depict the land shall be deemed not to form any part of the licence unless that plan or diagram is referred to in PART 2 in the DESCRIPTION OF LAND.
- (c) The code number appearing at the end of each clause of the Licence shall be deemed not to form part of the Licence. (6.006)

5. Clauses and Schedules

References to Clauses Parts and Schedules are references to clauses parts and schedules of this Licence. (6.007)

6. Statutes

- (a) A reference to a statute statutory instrument or ordinance includes amendments to that statute statutory instrument or ordinance whether by subsequent statutes statutory instruments or ordinances or otherwise and any statute statutory instrument or ordinance passed in substitution for the statute statutory instrument or ordinance referred to or incorporating any of its provisions.
- (b) A reference to a statute includes a reference to any regulation made thereunder. (6.008)

7. Joint and Several Covenants

Any covenant or agreement on the part of two or more persons shall be deemed to bind them jointly and severally. (6.009)

8. Severability

Any provision of this Licence which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or inability to enforce without invalidating the remaining provisions of such provision in any other jurisdiction. (6.010)

9. Applicable Law

This Licence shall be construed and interpreted in accordance with the law of New South Wales. (6.011)

10. Licence a "Holding" for purposes of the CLA

The Holder acknowledges that this Licence is a Holding within the meaning of the CLA and the Holder is a Holder within the meaning of that Act and the provisions of that Act relating to holdings and holders apply to this Licence and the Holder. (6.012)

11. Performance of Functions etc

Any power authority duty or function conferred or imposed upon the Minister under this Licence may be exercised or performed by any person authorised by the Minister. (6.013)

12. Authorised Officer

Where under this Licence the Minister is empowered to authorise any person to perform or exercise any power authority duty or function under this Licence such person shall be validly authorised if he is authorised to exercise any power authority duty or function conferred by any Licence granted by the Minister or any Licence of a specified type or any Licence within a specified locality. (6.014)

13. Minister as Public Authority

The Minister and Holder acknowledge that nothing in this Licence can in any way restrict or otherwise affect the Minister's unfettered discretion as to the use of the Minister's statutory powers as a public authority. (6.015)

14. Approval by the Minister

- (a) In any case where pursuant to this Licence the doing or executing of any act matter or thing by the Holder is dependent upon the approval or consent of the Minister such approval or consent shall not be effective unless given in writing and may be given or withheld by the Minister in the Minister's absolute discretion and may be given subject to such conditions as the Minister may determine unless otherwise herein provided.
- (b) The Holder expressly agrees that any failure to comply with a condition imposed by the Minister will constitute a failure by the Holder to comply with a condition of this Licence. (6.016)

15. Opinion of the Minister

Any opinion to be formed by the Minister for the purposes of this Licence may be formed by the Minister on such grounds and material as the Minister determines to be sufficient after consultation if the Minister deems it necessary with any New South Wales Government Department or other public authority the Standards Association of Australia or any other body whose objects and functions are relevant. In forming any such opinion the Minister shall be deemed to be exercising merely administrative functions. (6.017)

16. Holder to pay Cost of Work

Whenever the Holder is required in this Licence to do or effect any act matter or thing then the doing of such act matter or thing shall unless this Licence otherwise provides be at the sole risk cost and expense of the Holder. (6.018)

17. Notices

- (a) All notices or communications required to be or which may be given or served by the Minister to or upon the Holder under this Licence or which may be convenient to be given or served in connection with this Licence shall be in writing and shall be sufficiently given or served if left at or sent by ordinary post addressed to the Holder at his address specified in Column 2 of Item 1 of Schedule 1 or at the Premises or at such other place as notified in writing by the Holder to the Minister.
- (b) All notices or communications required to be or which may be given or served by the Holder to or upon the Minister under this Licence or which may be convenient to be given or served in

connection with this Licence shall be in writing and shall be sufficiently given or served if signed by the Holder or if the Holder is a corporation by the Secretary of the Holder or the person acting as such for the time being and if left at or sent by ordinary post addressed to the person specified in Column 2 of Item 2 of Schedule 1.

- (c) Any notice or communication given or served by post shall be deemed to have been duly given or served at the time when it would in the ordinary course be delivered. (6.019)

18. Manner of Payment of Rent and Other Moneys

The rent and other moneys payable in accordance with this Licence shall be paid to the Minister at the address specified in Column 2 of Item 3 of Schedule 1 or to such other person or at such other address as the Minister may from time to time direct by notice in writing served on the Holder. (6.020)

19. Time to be of the Essence

The Minister and the Holder expressly agree that where in any provision of this Licence the Holder is given or allowed a specified time within which to undertake or do any act or thing or any power is conferred or any event occurs after the lapsing of a specified time time shall be the essence of the contract in that regard. (6.021)

20. Whole agreement

The conditions covenants and provisions contained in the Licence expressly or by statutory implication and any provision of the CLA which apply to this Licence cover and comprise the whole of the agreement between the parties hereto and it is expressly agreed and declared that no further or other covenants or provisions whether in respect of the Premises or otherwise shall be deemed to be implied herein or to arise between the parties hereto by reason of the invitation by the Minister to the Holder to submit a proposal for the redevelopment of the Premises or any document issued by the Minister prior thereto or by reason of the subsequent negotiations between the parties hereto or by reason or any promise representation warranty or undertaking given or made by any party hereto to another on or prior to the execution hereof or during the Term and the existence of any such implication or collateral or other agreement is hereby negated. (6.022)

21. Permitted Use

- (a) This Licence confers on the Holder a right to occupy the Premises for the purpose specified or referred to in Column 2 of Item 4 in Schedule 1.
- (b) The Holder will not use the Premises or allow them to be used for any purpose other than the purpose specified in Column 2 of Item 4 in Schedule 1. (6.023)

22. No Exclusive Possession

The Holder acknowledges that this licence does not confer exclusive Possession of the Premises upon the Holder. (6.023A)

23. Holder not to Commit Nuisance etc

The Holder will not at any time during the Term of this Licence:

- (a) carry on or permit to be carried on at the premises any noxious nuisance or offensive trade business.

- (b) do or permit to be carried on at the premises any act matter or thing which results in nuisance damage or disturbance to the Minister or owners or occupiers of adjoining or neighbouring lands or buildings.
- (c) use the premises for any illegal activity. (6.024)

24. No Residence on Premises

The Holder will not reside or permit any other person to reside on the Premises other than as may be specified or referred to in Column 2 of Item 4A of Schedule 1. (6.025)

25. Premises not to be Used for Business Purposes

The Holder will not use the Premises or any part thereof for any business purpose calling or trade or permit any form of business calling or trade to be conducted therein. (6.026)

26. Commencement and Revocation of Licence

- (a) This Licence shall commence on the date specified or referred to in Column 2 of Item 5 of Schedule 1 and shall continue in force until it is revoked in accordance with the provisions of this clause.
- (b) The Minister may in his absolute discretion revoke this Licence at any time by serving on the Holder a notice in writing revoking this Licence.
- (c) A revocation made under this clause shall take effect on the date specified in the notice or where no date is specified in the notice on the date on which the notice is served on the Holder.
- (d) Except as may be expressly provided for in this Licence the Holder acknowledges and agrees that the Holder will not be entitled to any compensation costs or damages in respect of the revocation of this Licence. (6.027)

27. Licence Granted subject to Aboriginal Land Claim

- (a) The Holder is granted this licence subject to a possible Aboriginal Land Claim over this land provided in s36 of the Aboriginal Land Rights Act 1983.
- (b) Notwithstanding any other provision of this Licence, this Licence shall terminate in the event that the Minister determines that the land is claimable Crown land or a Court determines that the land is claimable Crown land.
- (c) Except as may be expressly provided for in this Licence the Holder acknowledges and agrees that the Holder will not be entitled to any compensation costs or damages in respect of the termination of this Licence by operation of this clause. (6.029C)

28. Payment of Rent (CPI)

- (a) For the purposes of this clause:

"*Initial Rent*" means the rent specified in Column 2 of Item 11 of Schedule 1.

"*CPI Review Date*" means each anniversary date of the Commencement Date.

"*CPI Review Period*" means the period between each CPI Review Date.

"*Due Date*" means each anniversary date of the Commencement Date.

"*Market Rent Review Date*" means the date of the expiration of each period of years as specified in Column 2 of Item 12 of Schedule 1 calculated from the Commencement Date.

"*Market Rent Review Period*" means the period between each Market Rent Review Date.

- (b) The Holder covenants with the Minister that the Holder will during the whole of the Term pay to the Minister in accordance with the provisions of this clause without demand free of exchange and without deduction whatsoever the rent hereinafter provided.
- (c) The Holder will pay to the Minister on the commencement Date the Initial Rent and thereafter shall pay on each Due Date rent in advance adjusted as hereinafter provided.
- (d) (i) On the CPI Review Date the rent shall be adjusted in accordance with the following formula:
- $$R = B \times \frac{C}{D}$$
- where:
- R represents the adjusted rent;
- B represents the annual rent payable during the year preceding the CPI Review Date;
- C represents the Consumer Price Index number for the last quarter for which such a number was published before the CPI Review Date; and
- D represents the Consumer Price Index number for the last quarter for which such a number was published before the immediately preceding CPI Review Date (or if there is no immediately preceding CPI Review Date then the Commencement Date).
- (ii) In this clause "Consumer Price Index number" in relation to a quarter means the number for that quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician. In the event that such index be discontinued or abolished the Minister may at his absolute discretion nominate another Index.
- (iii) If the reference base for the Consumer Price Index is changed regard shall be had only to Index numbers published in terms of the new reference base or to Index numbers converted to the new reference base in accordance with an arithmetical conversion factor specified by the Australian Statistician.
- (iv) Any rent adjusted under this subclause shall be adjusted to the nearest whole dollar.
- (e) In addition to the indexation review provided for in subclause (d) on the first Market Rent Review Date after commencement and thereafter on each Market Rent Review Date the rent may be redetermined by the Minister pursuant to the provisions of Sections 142 and 143 of the CLA.
- (f) A redetermination of rent for the purposes of subclause (e) shall be deemed to have been made on the Market Rent Review Date if it is made at any time within the period of six months before the market Rent Review Date.

- (g) Where the Minister does not redetermine the rent as provided for in subclause (e) he may redetermine the rent pursuant to the provisions of Sections 142 and 143 of the CLA at any time prior to the next Market Rent Review Date and no succeeding Market Rent Review Date shall be postponed by reason of the operation of this subclause.
- (h) Where the Minister does not redetermine the rent on the First Market Rent Review Date or a Market Rent Review Date as provided for in subclause (e) the Holder may by notice in writing served on the Minister require that the Minister redetermine the rent pursuant to the provisions of Sections 142 and 143 of the CLA. Where the Holder requires the Minister to redetermine the rent under this subclause he shall pay on demand the costs of the Minister (or so much of the cost as the Minister may require) in making that determination.
- (i) Subject to the provision of subclause (j) a redetermination of rent as provided for in subclauses (e) (g) and (h) shall take effect and be due and payable from the date of issue of the notice of redetermination under Section 142 of the CLA even if an objection or appeal under that Section has been lodged. On the completion of the objection and appeal process any necessary adjustments shall be made.
- (j) A redetermination of rent made before its relevant Market Rent Review Date as provided for in subclause (f) shall take effect from the relevant Market Rent Review Date even if an objection or appeal under Section 142 of the CLA has been lodged. On the completion of the objection and appeal process any necessary adjustments shall be made.
- (k) The Holder acknowledges that the Minister may make a direction under Section 152 of the CLA in respect of any rent payable under this Licence. (6.031)

29. Continuing Obligation

The obligation of the Holder to pay the Rent shall be a continuing one during the term of this Licence and shall not abate in whole or in part or be affected by any cause whatsoever. (6.037)

30. Holder to Pay Rates etc

The Holder will when the same become due for payment pay all (or in the first and last year of the term of this Licence the appropriate proportionate part) rates taxes (including Land Tax) assessments duties charges and fees whether municipal local government parliamentary or otherwise which are at any time during the currency of this Licence lawfully charged upon imposed or levied in respect of the Premises or on the Minister or the Holder on account thereof and will if required by the Minister produce to the Minister the receipts for such payments within ten business days after the respective due dates for payment AND in case such rates taxes duties and fees so covenanted to be paid by the Holder are not paid when the same shall become due the Minister may if the Minister thinks fit pay the same and any such sum or sums so paid may be recovered by the Minister as if such sums were rent in arrears. (6.039)

31. Holder to Pay Other Charges

The Holder will pay all other fees charges and impositions which are at any time during the Term payable in respect of the Premises or on account of the use and occupation of the Premises by the Holder. (6.040)

32. Goods and Services Tax

- (a) Definitions

In this clause the expressions "GST", "supply", and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.

(b) Amounts GST Exclusive

With the exception of any amount payable under this clause, unless otherwise expressly stated all amounts stated to be payable under this Licence are exclusive of GST.

(c) Responsibility for GST

(i) Despite any other provision in this Licence, if GST is imposed on any supply made under this Licence, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.

(ii) The recipient must pay the amount referred to in subclause (c)(i) in addition to and at the time payment for the taxable supply is required to be made under this Licence.

(d) Valuer/Umpire to return GST Exclusive Value

Any valuer or umpire returning a valuation must return a GST exclusive market value for it in any case where the valuation is for the purpose of determining a supply value to which GST is to be added under this Licence. (6.040A)

33. Holder to Pay for Services

The Holder will as and when the same become due for payment pay to the Minister or to any other person or body authorised to supply the same all proper charges for gas electricity water or other services supplied to or consumed in or on the Premises and will also pay all charges in respect of any telephone services connected to the Premises. (6.041)

34. Holder not to Impose Liability on Minister

Subject to any other provision of this Licence the Holder will not without the written consent of the Minister by any act matter or deed or by failure or omission cause or permit to be imposed on the Minister any liability of the Holder under or by virtue of this Licence. (6.042)

35. Holder not to undertake development without consent notwithstanding any other provision of this Licence

The Holder will not undertake any development within the meaning of the Environmental Planning and Assessment Act 1979 contrary to the provisions of that Act or in breach of any restriction condition or prohibition imposed by an Environmental Planning Instrument or condition of a development consent. (6.043)

36. Development Consent

The Holder will not undertake any activity on or within the Premises for which consent is required under the Environmental Planning and Assessment Act 1979 or any Instrument made thereunder without first obtaining such consent and in accordance with any condition or requirement of that consent. (6.044)

37. Compliance with Statutes

(a) The Holder will comply with the requirements of all statutes regulations or by-laws and requirements of all relevant public and local authorities in so far as they apply in relation to the use and occupation of the premises.

- (b) The Holder will forthwith on being served with a notice by the Minister comply with any notice or direction served on the Minister by a competent authority relating to the destruction of noxious animals or plants or pests or the carrying out of repairs alterations or works on or to the Premises. (6.045)

38. Work Health and Safety

The Holder must comply with the *Work Health and Safety Act 2011* (NSW), the *Work Health and Safety Regulation 2011* (NSW) and all other requirements of any other legislation or statutory authority in this regard whilst on the Premises. (6.046)

39. Holder not to deal with Licence or part with possession of Premises

Subject to any other provision of this Licence the Holder will not during the Term of this Licence transfer or create any interest in the Licence or authorise or permit any person to occupy the Premises. (6.047)

40. Revocation on the Request of the Holder

The Holder may at any time by notice served on the Minister request that this Licence be revoked and the Minister if he is satisfied that the Holder has complied with the conditions and provisions of this Licence or the CLA will as soon as practicable comply with such a request. (6.051)

41. Interest on Overdue Money

The Holder shall pay interest on any money due and payable under this Licence to the Minister at the rate prescribed from time to time under the provisions of Section 148 of the CLA and any such interest shall for the purposes of this Licence be deemed to be Rent in arrears. (6.052)

42. Failure to pay money or Undertake Works

- (a) Where under this Licence the Holder is required to pay any money to a third party and neglects to do so for a period of 14 days after the money became due and payable it shall be lawful for but not obligatory upon the Minister (and without prejudice to any rights and powers arising from such default) to pay such money as if it were the Holder and the Holder will reimburse the Minister in respect of any such payments on demand.
- (b) Where under this Licence the Holder is required to do or cause to be done any work or thing and the Holder neglects to do the work or thing for a period of 14 days after that work or thing was due or required to be done it shall be lawful for but not obligatory upon the Minister (and without prejudice to any rights and powers arising from such default) to do or effect such work or thing as if the Minister were the Holder and for that purpose the Minister the Minister's officers agents contractors and workmen may enter upon the whole or any part of the Premises and there remain for the purposes of doing or effecting any such work or thing and the Holder will reimburse the Minister for the cost of the doing or effecting the work or thing on demand. For the purposes of this clause the word cost shall include any sums paid for any insurance indemnities under the laws relating to workers compensation.
- (c) The Holder expressly agrees that any money or cost payable to the Minister under this clause shall constitute a debt owed by the Holder to the Minister and may be recovered by the Minister accordingly.
- (d) Where the Premises has a common boundary with other land owned leased or held by the Holder (hereinafter called the "other land"). The Holder irrevocably grants to the Minister the Minister's officers agents contractors and workmen a licence to enter upon the said other land

for the purpose of gaining access to the Premises or for the purpose of undertaking any work or thing authorised permitted or contemplated by this Clause.

In exercising any power conferred by this subclause the Minister the Minister's servants employees and agents will not be liable for any reasonable damage suffered or occasioned to the other land or anything constructed thereon.

- (e) The Holder expressly agrees that the provisions of this clause shall continue after the expiration or sooner determination of this Licence and the Minister may make any payment or effect any work or thing authorised by this clause after the expiration or sooner determination of this Licence as if such expiration or sooner determination had not taken place. (6.053)

43. Indemnity

- (a) For the purposes of this clause the term Minister shall include Her Majesty the Queen Her heirs and Successors the State of New South Wales the Minister and the agents servants employees and contractors of Her Majesty Her Majesty's Heirs and Successors the State of New South Wales and the Minister.
- (b) The Holder agrees that the Holder will indemnify and keep indemnified the Minister from and against all actions suits claims and demands of whatsoever nature and all costs charges and expenses in respect of any accident or injury to any person or property which may arise out of the use of the Premises or the construction or maintenance of works as may be authorised under the Licence notwithstanding that the conditions of this Licence shall in all respects have been observed by the Holder or that any such accident or injury shall arise from any act or thing which he may be authorised or compelled to do hereunder except to the extent that any such claims and demands arise from any negligence or wilful act or omission on the part of the Minister.
- (c) The Holder expressly agrees that the obligations of the Holder under this clause shall continue after the expiration or other determination of this Licence in respect of any act deed matter or thing happening before such expiration or determination except to the extent that any such claims and demands arise from any negligence or wilful act or omission on the part of the Minister. (6.054)

44. Insurance - Public Risk

The Holder will (without in any way limiting the liability of the Holder under any other provision of this Licence) forthwith take out and thereafter during the Term keep current a public risk insurance policy for the amount specified in Column 2 of Item 19 of Schedule 1 for any one claim (or such other reasonable amount as the Minister may from time to time specify in writing to the Holder) whereby the Minister shall during the continuance of this Licence be indemnified against claims and demands of every kind arising from death or bodily injury or damage to property arising out of the Holder's use of the Premises. (6.057)

45. Insurance - Workers Compensation

The Holder will (without in any way limiting the liability of the Holder under any other provision of this Licence) forthwith take out and thereafter during the Term keep current insurance against any liability which may arise at common law or by virtue of any relevant workers compensation legislation in connection with the performance of work or provision of services on or about the Premises and the operation thereof so that the Minister will be indemnified against all claims for death or bodily injury by any person at all times. (6.058)

46. Insurance - Against Fire and Other Risks

The Holder will (without in any way limiting the liability of the Holder under any other provision of the Licence) forthwith take out and thereafter during the Term keep current insurance against loss damage or destruction by fire lightning riots strike malicious damage sprinkler failure plumbing leakage storm and tempest explosion earthquake impact by vehicles Acts of God and against such other risks (if any) to the Premises as the Minister may from time to time reasonably direct to the full insurable value thereof permitted by the Insurer on a replacement and/or reinstatement basis including extra costs or reinstatement cost of removal of debris and all professional fees incurred in replacing and/or reinstating the Premises. (6.061)

47. Total Destruction

- (a) In the event of the Improvements being Totally Destroyed one of the following alternatives shall apply:

First Alternative - Rebuild to original Design

The Holder may and shall if so required by the Minister from the insurance moneys available (and to the extent that the same may be insufficient from its own moneys) reinstate the Improvements substantially in accordance with their original design.

Second Alternative - Rebuild to different Design

If the Minister and the Holder agree that the Improvements are to be rebuilt made or installed to a different design and agree upon the plans and specifications relating thereto that the Holder will from the insurance moneys available (and to the extent the same may be insufficient from its own moneys) prepare the Land for the new improvements and then construct make and install the improvements in accordance with the agreed plans and specifications.

Third Alternative - Improvements not to be rebuilt

If the Minister and the Holder agree that the Improvements need not be reinstated by the Holder and the Second Alternative is not adopted the Holder will promptly demolish the Improvements and clear the Land of all improvements structures rubbish and debris and following such demolition and clearance being carried out to the Minister's satisfaction and the Minister so certifying in writing to the Holder and the Holder at that time not being in default under any provision of this Licence the Holder will then deliver to the Minister a duly stamped surrender of the Licence and the Minister shall accept the same. The surrender as aforesaid shall be without prejudice to any claim the Minister may have against the Holder immediately prior to the date of such surrender.

- (b) For the purposes of this clause "Totally Destroyed" means destroyed or damaged so extensively that in the opinion of the Minister reasonably held it would be impractical or not commercially viable to make good such damage. (6.062)

48. Partial Destruction

In the event of the Improvements being partially destroyed or damaged the Holder will from the insurance moneys available (and to the extent that the same may be insufficient from its own moneys) repair replace and make good the whole of the destroyed or damaged portion of the Improvements as nearly as possible to the condition in which it was immediately prior to such damage or destruction with such modifications as the Holder may seek and the Minister approve (such approval not to be unreasonably withheld) or as may be required by some competent authority and approved by the Minister (such approval will not be unreasonably withheld). (6.063)

49. Provisions Re Policies

- (a) The following provisions apply to all policies of insurance required to be effected by the Holder under this Licence:
- (i) Where the Minister serves a notice on the Holder directing the Holder to enter into a policy with an insurer approved by the Minister the policy is to be entered into with an insurer approved by the Minister. The Minister shall specify a list of approved insurers in any notice served under this paragraph. Where the Minister does not serve a notice as provided for in this paragraph policies of insurance shall be entered into with an insurer carrying on business in Australia.
 - (ii) Where a provision of this Licence specifies an amount for which a policy is to be entered into for (or makes provision for such an amount to be specified) then the policy shall be entered into for the amount specified. Where a provision does not specify the amount for which a policy is to be entered into for the policy shall be entered into for an amount sufficient to cover the risks likely to be encountered having regard to the type of activity undertaken on the Premises and the nature of the Premises.
 - (iii) All policies are to contain conditions and exclusions commonly effected in relation to the type of activity undertaken on the Premises and the nature of the Premises provided that the Minister may by notice served on the Holder direct the Holder to enter into a policy containing specified provisions or which does not contain specified provisions or exclusions and the Holder shall use his best endeavours to comply with the direction.
 - (iv) All policies are to be taken out in the names of the Minister and the Holder for their respective rights and interests and in the name of such other parties having an insurable interest as the Minister may require.
 - (v) Duplicate or certified copies of the policies and all renewal certificates and endorsement slips are to be lodged by the Holder with the Minister if required by the Minister.
 - (vi) All premiums payable in respect of policies and renewals of policies are to be paid punctually by the Holder and the receipt for each premium payable in respect of each policy (or other proof of payment to the Minister's satisfaction) is to be produced by the Holder to the Minister at the request of the Minister.
 - (vii) Where the Minister has served a notice on the Holder under paragraph (i) the Holder will use all reasonable endeavours to ensure that the insurer which issues a policy advises the Minister of any failure by the Holder to renew any policy or pay any premium in respect thereof.
 - (viii) The Holder will not at any time during the Term do or bring upon the Premises anything whereby any insurance relating to the Premises against damage by fire and other risks may be rendered void or voidable. If the Holder does or brings anything upon the Premises whereby the premium on the insurance shall be liable to be increased the Holder will obtain insurance cover for the increased risk and pay all additional premiums (if any) required to be paid.
 - (ix) The Holder will use all reasonable endeavours to ensure that full true and particular information is given to the insurer with which the insurances are effected of all matters and things the non-disclosure of which might in any way prejudice or affect any policy of insurance or the payment of all or any moneys thereunder.
- (b) The Minister in his own name or as the attorney of the Holder in the name of the Holder shall be entitled to institute all proceedings against any insurer which issues a policy of insurance

required by this Licence to recover from it any amount for loss damage or injury or other money payable under any indemnity in favour of the Minister. The Holder hereby appoints the Minister the attorney of the Holder for the purpose as aforesaid.

- (c) The Holder expressly agrees that the provisions of subclause (b) continue in force after the Termination Date. (6.065)

50. Construction Of Improvements Permitted With Consent

- (a) For the purposes of this clause "Improvement" means any building structure facility work or pontoon.
- (b) The Holder will not construct effect erect or undertake any Improvements on the Premises other than with the prior consent in writing of the Minister. (6.067)

51. Construction Of Improvements

- (a) For the purposes of this clause "Improvement" means any building structure facility work or pontoon.
- (b) The Holder may construct effect erect or undertake any of the Improvements specified or referred to in Column 2 of Item 20 of Schedule 1.
- (c) Any Improvements constructed erected effected or undertaken shall be constructed erected effected or undertaken in accordance with the plans conditions and specifications contained or referred to in Column 2 of Item 21 of Schedule 1.
- (d) The Holder will not construct effect erect or undertake any Improvements on the Premises other than the Improvements specified or referred to in Column 2 of Item 20 of Schedule 1 or which may be authorised or required under any other provision of this Licence. (6.068)

52. Improvements - No demolition without Consent

- (a) For the purposes of this clause "Improvement" means any building structure facility work or pontoon.
- (b) The Holder will not demolish destroy remove take away or pull down any Improvements on the Premises without the written consent of the Minister. (6.070)

53. Ownership of Improvements CLA

The Holder acknowledges that the provisions of section 174 of the CLA apply. (6.074)

54. Ownership of Improvements

- (a) For the purposes of this clause "Improvement" means any building structure facility work or pontoon.
- (b) The Holder expressly acknowledges that any Improvement constructed erected effected or undertaken on the Premises during the Term shall forthwith become the property of the Minister and the Holder will not be entitled to any compensation in respect thereof. (6.075)

55. General Requirement to repair

Without prejudice to the specific obligations contained in this Licence the Holder will to the satisfaction of the Minister at all times during the Term keep all Improvements now erected or hereafter to be erected on the Land in good repair and properly maintained in all respects. (6.083)

56. Premises to be kept in clean and tidy condition

The Holder will at all times during the Term keep the Premises in a clean and tidy condition and will (subject to any other provision of this Licence) on the Termination Date leave the Premises in a clean and tidy condition. (6.088)

57. Holder May Repair Improvements

- (a) For the purpose of this clause "Repair" means to replace part of an Improvement with material of a similar type and size but not so as to enlarge or significantly alter the appearance or structure of the Improvement.
- (b) The Holder may from time to time at the Holder's own expense Repair the Improvement.
- (c) The Holder shall not undertake any work upon an Improvement which does not involve the painting of the Improvement or is not a Repair as defined in this clause. (6.088A)

58. Minister's Right to Enter Inspect and Repair

The Minister and the Minister's agents may at all reasonable times upon giving to the Holder reasonable notice (except in the case of emergency when no notice shall be required) enter upon the Premises and view the state of repair thereof and may serve upon the Holder a notice in writing of any defect (the repair of which is the Holder's obligation hereunder) requiring the Holder within fourteen days to repair the same. (6.090)

59. Use of Public of Defective Structures

The Holder will not at any time during the Term permit or suffer members of the public to be upon or use any building structure facility installation contrivance or other thing in or upon the Premises which has to the knowledge of the Holder or in the opinion of the Minister the Council or any other public or local authority having jurisdiction in the matter become seriously defective unsafe weakened out of repair or faulty in any way PROVIDED HOWEVER the Minister shall not be held liable or responsible for any failure to notify the Holder of any such defect unsafeness weakness out of repair or fault. (6.092)

60. Holder to erect Barricades etc

Where the Premises or any part of the Premises become unsafe hazardous or dangerous the Holder will forthwith erect such warning signs and barricades as may be necessary until the Premises are rendered safe. (6.093)

61. Rodents and Vermin

The Holder will take all reasonable precautions to keep the Premises free of rodents vermin insects and pests and will in the event of failing so to do if required by the Minister but at the cost of the Holder employ from time to time pest exterminators approved by the Minister whose approval shall not be unreasonably withheld. In performing its obligations pursuant to this clause the Holder and any one acting on the Holder's behalf will not use any substance prohibited by any present or future legislation or any regulation thereunder. (6.095)

62. Breakages

The Holder will immediately at the Holder's expense make good any breakage defect or damage to the Improvements (including but not limited to broken glass) or to any adjoining premises or to any facility or appurtenance of the Minister occasioned by want of care misuse or abuse on the part of the Holder or the Holders sub-tenants or other persons claiming through or under the Holder or otherwise occasioned by any breach or default of the Holder hereunder. (6.096)

63. Notification Of Accident

The Holder will give to the Minister prompt notice in writing of any serious accident to or serious defect or want of repair in any of the Improvements facilities devices contrivances services to or fittings in the Premises or other things or of some or any of them having become seriously defective unsafe weakened out of repair in any way or likely to cause any serious danger risk or hazard to the Premises or any person therein unless such defect unsafeness weakness or want of repair is capable of being and is promptly remedied by the Holder. (6.099)

64. Certain Trees and Vegetation not to be Interfered with

The Holder will not damage harm kill or destroy the trees and vegetation specified in Column 2 of Item 42 of Schedule 1. (6.105)

65. Relics

- (a) Unless authorised to do so by a permit under Section 87 or a consent under Section 90 of the National Parks and Wildlife Act 1974 and subject to observance and compliance with any conditions imposed on the grant of such permit or consent the Holder will not knowingly disturb destroy deface or damage any aboriginal relic or place or other item of archaeological significance within the Land and shall take every precaution in drilling excavating or carrying out other operations or works in the Land against any such disturbance destruction defacement or damage.
- (b) If the Holder becomes aware of any aboriginal relic or place or other item of archaeological significance within the Land the Holder will within 24 hours notify the Director General National Parks and Wildlife Service of the existence of such relic place or item.
- (c) The Holder will not continue any operations or works on the Land likely to interfere with or disturb any relic place or item referred to in subclause (b) without the approval of the Director General National Parks and Wildlife Service and the Holder will observe and comply with all reasonable requirements of the Director General in relation to the carrying out of the operations or works. (6.107)

66. Artefacts

All fossils artefacts coins articles of value articles of antiquity structure and other remains or things of geological historical or archaeological interest discovered on or under the surface of the Premises shall as between the Minister and the Holder be deemed to be the absolute property of the Minister and the Holder will as authorised by the Minister watch or examine any excavations and the Holder will take every precaution to prevent such articles or things being removed or damaged and shall immediately upon discovery thereof notify the Minister of such discovery and carry out at the reasonable expense of the Holder the Minister's orders as to the delivery up or disposal of such articles or things. (6.108)

67. Maintenance of Waterways

The Holder will at all times during the Term ensure that the waterways and submerged land forming the whole or part of the Premises are kept clean and free from debris (whether floating or otherwise) and will do all things necessary to ensure that a free-flowing circulation of water is maintained within the waterways forming part of the Premises. (6.125)

68. Residence Aboard Vessels

The Holder will ensure that no person resides on any vessel or vessels moored or berthed at the Premises. (6.127)

69. Prohibited Use of Vessel

The Holder will not at any time during the Term carry on or permit to be carried on any noxious noisome or offensive trade business calling or activity on any vessel moored or berthed at or on the Premises. (6.128)

70. Anti-Pollution Measures

The Holder will ensure that satisfactory measures are taken to prevent pollution of the waterway adjoining or forming part of the Premises or its foreshores arising out of the use of the Premises or from vessels moored thereat. (6.129)

71. Holder not to Undertake Dredging or Excavation

The Holder will not dredge dig up or excavate the land (except such excavation as may be necessary to sink any pile or post) without the prior written consent of the Minister. (6.130)

72. Public to have Access to Foreshore

The Holder will allow the public to at all times have access over that part of the Land that is situated below Mean High Water Mark and which is commonly known as the foreshore and any structure constructed on the land shall be constructed so as not to unreasonably obstruct access by the public over such lands. (6.131)

73. Seawalls

The Holder will not cause any damage to any retaining wall or seawall situated on the land. (6.133)

74. Holder to Comply with Maritime Authority of NSW Directions

The Holder will at all times comply with any directions given by the Maritime Authority of NSW in the interests of safe navigation equitable use of and conservation of waterways and the prevention of pollution. (6.134)

75. Holder to Give Notice of Removal of Structures

The Holder will forthwith give notice to the Minister of any removal in whole or in part of any structure authorised by this Licence. (6.135)

76. Holding Number to be Displayed

The Holder will ensure that the Holding Number specified in Column 2 of Item 51 of Schedule 1 in white letters not less than 10 cm high and painted on a black background shall be affixed and kept affixed to the end of the structure referred to in that Item in a prominent position visible from the seaward side. Such sign shall be kept painted so as to be clearly legible throughout the term of the Licence. (6.138)

77. Alterations not to be made without Consent

The Holder will not alter or vary any improvement situated on the said Land (whether in existence at the commencement) or constructed or affected under this Licence without the prior written consent of the Minister. (6.140)

78. Holder not to remove Materials

- (a) The Holder will not mine remove extract dig up or excavate any sand stone gravel clay loam shell or similar substance or permit any other person to undertake any such action without the prior consent in writing of the Minister and subject to such conditions as the Minister may determine.
- (b) Subclause (a) shall not apply to any removal digging up or excavation as may be necessary to construct or undertake any improvement authorised by or under this Licence provided that any such removal digging up or excavation is undertaken in accordance with the requirements of that authority.
- (c) The Minister and the Holder expressly agree that a failure by the Holder to comply with any condition imposed pursuant to subclause (a) shall constitute a failure by the Holder to comply with a provision or covenant of this Licence. (6.194)

79. Holder to Yield Up

The Holder will forthwith upon the revocation of this Licence peaceably surrender and yield up to the Minister the Premises in good condition reasonable wear and tear excepted together with all conveniences amenities and appurtenances relating thereto clear and free from rubbish and in good and substantial repair order and condition in every case having regard to the age of what is being surrendered or yielded up. (6.199)

80. No Right to Purchase etc

The Holder expressly acknowledges that the grant of this Licence does not confer a right to purchase the land or to the grant of a lease or to the grant of a further licence. (6.200)

81. Special Conditions

The special conditions specified or referred to in Column 2 of Item 71 of Schedule 1 shall be deemed to be conditions and provisions of this Licence. (6.201)

***** End of Licence Clauses *****

SCHEDULE 1

Item	Paragraph No	Column 1 (description of variable particulars)	Column 2 - (particulars)
1	17	Holder's Address for service of notices	Civic & Cultural Centre Tumbulgum Rd MURWILLUMBAH NSW 2484
2	17	Minister's Address for service of notices	Department of Industry - Lands and Forestry PO Box 2185 DANGAR NSW 2309
3	18	Address for payment of rent	Department of Industry - Lands and Forestry PO Box 2155 Dangar NSW 2309
4	21	Purpose for which Premises may be used	Boardwalk (upgrade and extension), Jetty (2), Pontoon (2.4m x 2.4m), Pontoon (2.5m x 3.7m), Pontoon (3m x 5m), Reclamation (1), Walkway (9m x 1m), Walkway (3m x 0.8m), Walkway (6m x 0.75m), Rock Armouring
4A	24	No Residence on Premises	No residence
5	26	Commencement Date	The date specified on page 1 of the Licence being the date of the execution of the Licence.
11	28	Initial Rent	\$490.00
12	28	Market Rent Review Period	3 years
19	44	Insurance - Public Risk	\$20 Million
20	51	Improvements that may be constructed	Boardwalk (extension and upgrade of pathway)
21	51	Improvements - plans conditions and specifications	DA14/0122
42	64	Trees and vegetation to be preserved	All trees & vegetation on the land except noxious plants
51	76	Holding number	RI 591201
71	81	Special conditions or provisions	Annexed as Schedule 2

***** End of Schedule 1 *****

SCHEDULE 2

82. Method of Removal of Improvements

Any improvements required to be removed under the terms of this licence shall be removed by means as approved by the Minister and under relevant consents and approvals as may be necessary.

83. Works Permitted

All works must be carried out in accordance with the conditions of consent described in Notice of Determination of Development Application DA14/0122 dated 3 November 2014.

84. Native Title *

Native title under the Native Title Act 1993 (Cth) ("**NTA**") may exist with respect to the Land.

To the extent that you, the licensee, are permitted to do something under this Licence, then your right to do the activity prevails over any native title rights and interests and the existence of those native title rights do not prevent you from doing the activity.

In such a case, if the act is wholly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title continues to exist in its entirety but the rights and interests have no effect in relation to the act.

For some activities under the Licence, you must first obtain the Minister's consent. In those cases, the Minister may only be able to consent to those acts if that consent can be given in accordance with the NTA.

** These notes do not form part of this Licence's terms and conditions.*

85. Department of Primary Industries - Fisheries requirements

The licence holder is to adhere to the conditions outlined in the letter from Department of Industry Fisheries dated 5 April 2018 (Ref C18/1671- copy attached)

***** End of Schedule 2 *****

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OUR REF: C18/167

5 April 2018

Ms Cherelle Brooke
Senior Property Management Officer – Regional Services
NSW Department of Industry – Crown Lands and Water Division
Via email: cherelle.brooke@crowland.nsw.gov.au

Dear Ms Brooke

Re: s199 Referral # C18/167 for dredging and reclamation associated with the extension of a boardwalk on the foreshore of Cudgen Creek, adjacent SP 52701, Moss Street, Kingsliff, Tweed LGA

Reference is made to Department of Industry - Crown Lands and Water Division's pending approval of dredging and reclamation works associated with the above mentioned project forwarded to DPI Fisheries on 4 April 2018.

DPI Fisheries, a division within the Department of Primary Industries, assesses applications for dredging and reclamation works, harm marine vegetation, and obstruction of fish passage in accordance with Part 7 of the *Fisheries Management Act 1994* (FM Act) and the *Policy and Guidelines for Fish Habitat Conservation and Management (2013 Update)* (DPI Fisheries P&G).

Section 199 of the FM Act (refer to Attachment 1) is applicable to this proposal because it pertains to dredging and reclamation works to be authorised by a public authority. Section 199 requires the proposal to be referred to the Minister for Primary Industries and that the public authority considers any matters concerning the proposed works raised by the Minister.

DPI Fisheries has reviewed the subject project and associated mitigation measures outlined in the application, in particular, the Statement of Environmental Effects dated April 2014 and the General Arrangement Plan dated November 2013..

DPI Fisheries has no objection to the proposed works. In accordance with Section 199 (1)(b) of the FM Act, the matters raised within Attachment 2 of this notice must be considered. These matters are to ensure that impacts to key fish habitats will be avoided or minimised to a level consistent with the requirements of DPI Fisheries P&G and relate to the Department's responsibilities for ensuring fish stocks are conserved and that there is "no net loss" of key fish habitats upon which they depend. The protection of key fish habitats provides for viable commercial fishing and aquaculture, quality recreational fishing and the continuation of Aboriginal cultural fishing. Should Department of Industry - Crown Lands and Water Division choose not to consider these matters, Department of Industry - Crown Lands and Water Division should contact DPI Fisheries prior to authorising the works.



Department of Primary Industries

If you have any queries, please contact me on 0447 537 168 or jonathan.yantsch@dpi.nsw.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jonathan Yantsch', with a horizontal line extending to the right.

Jonathan Yantsch

Fisheries Manager - Aquatic Ecosystems (North Coast)

Authorised delegate of the Minister for Primary Industries under s199

Cc: Bob Loring, Tweed District Fisheries Officer
Brad Harrison, Fisheries Conservation Compliance Officer



Attachment 1

Fisheries Management Act 1994 No 38

Part 7 Division 3 Section 199

199 Circumstances in which a public authority (other than local authority) may carry out dredging or reclamation

- (1) A public authority (other than a local government authority) must, before it carries out or authorises the carrying out of dredging or reclamation work:
 - (a) give the Minister written notice of the proposed work, and
 - (b) consider any matters concerning the proposed work that are raised by the Minister within 21 days after the giving of the notice (or such other period as is agreed between the Minister and the public authority).
- (2) Any such public authority is to notify the Minister of any dredging or reclamation work that it proposes to carry out or authorise despite any matter raised by the Minister. The Minister may, within 14 days after being so notified, refer any dispute to the Minister responsible for the public authority. If the dispute cannot be resolved by those Ministers, it is to be referred to the Premier for resolution.
- (3) In this section, public authority includes the Minister administering the Crown Lands Act 1989.

Attachment 2

MATTERS FOR CONSIDERATION UNDER s199 of the *Fisheries Management Act 1994*

Administration

1. DPI Fisheries recommends the inclusion of a condition that ensures a copy of relevant approval documentation be carried by the proponent or their contractor operating on-site.
Reason – A DPI Fisheries Compliance Officer may wish to check that the works are being undertaken in accordance with relevant approvals.
2. The subject works, including the construction methodology and final built design, should be consistent with the proposal outlined in the s199 referral to DPI Fisheries by Department of Industry - Crown Lands and Water Division on 4 April 2018. Any proposed changes to the methodology or final design should be discussed with DPI Fisheries prior to implementation.
Reason – This s199 consultation has been prepared following an assessment of the potential impacts of the described works upon the aquatic and neighbouring environments. Other works, which were not described in the referral have not been assessed and may have significant adverse impacts.

Erosion and sediment control

3. Sediment entering into waterways can directly impact on key fish habitats. DPI Fisheries recommends that, if Department of Industry - Crown Lands and Water Division authorise the works, the approval incorporates a condition that ensure:
 - Erosion and sediment mitigation devices are erected and managed in accordance with all applicable requirements of the Blue Book (i.e. Landcom [2004], *Managing Urban Stormwater: Soils and Construction* [4th Edition]) (<http://www.environment.nsw.gov.au/resources/water/BlueBookVol1.pdf>);
 - A floating boom and attached silt curtain are used and maintained to isolate the work site and minimise the impacts of turbidity and mobilised sediment during the construction; and
 - Stockpiles are located away from adjacent on water land¹, marine vegetation² (saltmarsh, mangrove, and seagrass) and riparian and aquatic vegetation³.*Reason – To ensure that sediment generated by the exposure of soil is not transported into the aquatic environment.*

¹ "Water land" means land submerged by water:

- a) whether permanently or intermittently, or
- b) whether forming an artificial or natural body of water,

and includes *wetlands* and any other land prescribed by the regulations.

Wetlands include marshes, mangroves, swamps, or other areas that form a shallow body of water when inundated intermittently or permanently with fresh, brackish or salt water, and where the inundation determines the type and productivity of the soils and the plant and animal communities.

² "Marine vegetation" means any species of plant that at any time in its life must inhabit water (other than fresh water).

³ "Aquatic vegetation" is a term used to describe native vegetation that inhabits freshwater but does not include noxious weeds within the meaning of the *Noxious Weeds Act 1993*.

Acid sulfate soil management

4. The site has potential for acid sulfate soils. DPI Fisheries recommends that if, Department of Industry - Crown Lands and Water Division authorise the works, the approval incorporates a condition that ensures excavated soil is managed in accordance with the *Managing Acid Sulfate Soil (EPA, 1995)*, *Acid Sulfate Soil Manual* (Acid Sulfate Soil Management Advisory Committee 1998) and consistent with best management practice outlined in *Restoring The Balance: Guidelines for Managing Floodgates and Drainage Systems on Coastal Floodplains* available at: http://www.dpi.nsw.gov.au/data/assets/pdf_file/0007/167875/restoring-balance-guidelines.pdf
Reason – Avoid oxidisation, and or appropriately treating potential acid sulfate soils to minimise impacts on aquatic ecosystems.

Dewatering

5. Dewatering is an activity that can impact the aquatic environment. DPI Fisheries recommends that, if Department of Industry - Crown Lands and Water Division authorise the works, the approval incorporates a condition that ensures dewatering at the site is undertaken in accordance with accepted Best Management Practice (i.e. Landcom [2004], *Managing Urban Stormwater: Soils and Construction* [4th Edition]) including the use of mitigation controls such as a sediment fence between the sump water release outlet and the waterway.
Reason – To minimise turbidity impacts from the site and ensure that downstream water quality is not adversely affected.

Timing of works for low flows and low tides

6. Appropriately timing the works for periods of low flow can assist erosion and sediment control at the site. DPI Fisheries recommends that, if Department of Industry - Crown Lands and Water Division authorise the works, the approval incorporates a condition that ensures that works are undertaken during periods of low flows in the waterway and when Bureau of Metrological forecast for the Northern Rivers district forecast region (available at: www.bom.gov.au/nsw/forecasts/map.shtml) indicates several days of clear, dry weather.
Reason – Timing the works for appropriate conditions can reduce delays and minimise impacts on the aquatic environments.
7. Instream works should be undertaken during neap tides only as this facilitates the most effective use of silt curtains.
Reason – Timing the works for appropriate conditions can reduce delays and minimise impacts on the aquatic environments.

Instream works

8. Instream works can impact on key fish habitats. DPI Fisheries recommends that, if Department of Industry - Crown Lands and Water Division authorise the works, the approval incorporates a condition to ensure that:
- Machinery is restricted from entering or working from the waterway unless in accordance best management practice and an agreed work method statement;
 - Machinery is appropriately cleaned, degreased and serviced prior to use at the site and entry into the waterway; and
 - Emergency Spill Kits appropriate for containing and cleaning up petroleum and solvent product spills within waterways be available on site at all times during works.
- Reason – To reduce the threat of an unintended pollution incident impacting upon the aquatic environment.*
9. Snags are important key fish habitats and DPI Fisheries prioritise leaving snags in-situ, realignment, relocation and, only when these opportunities are not possible, removal. DPI Fisheries recommends that, if Department of Industry - Crown Lands and Water Division authorise the works, the approval incorporates a condition that ensures that no snags⁴ outside of the immediate works footprint are removed, and that such snags are only realigned or relocated if required.
- Reason – “Removal of large woody debris from NSW rivers and streams” is listed as a Key Threatening Process under the provisions of the FM Act. This approval has been granted on the basis that snags are not to be removed.*

Armouring works

10. Poorly designed or constructed bank protection works can have an immediate and lasting impact on key fish habitats. DPI Fisheries recommends that, if Department of Industry - Crown Lands and Water Division authorise the works, the approval incorporates a condition that ensures that:
- Only clean rock is used at the site;
 - The rock forming the bank armouring be placed into position using a rock grab or excavator; and
 - The rock used for bank protection be underlaid by geotextile fabric.
- Reason – To avoid fines, clay and other sediment un-necessarily entering the waterway and ensure rock armouring is constructed using Best Management Practice techniques.*

Avoiding harming marine vegetation

11. Marine vegetation including seagrass, mangroves, saltmarsh and kelp is not to be harmed or removed during the undertaking of works outlined in this s199 consultation. A separate authority under s205 of the *Fisheries Management Act 1994* is required to harm marine vegetation.
- Reason – To ensure that impacts on aquatic habitats are appropriately managed and minimised.*

⁴ “Snags” is a term used to describe **large woody debris** from trees and shrubs, including whole fallen trees, broken branches and exposed roots that have fallen or washed into a waterway and are now wholly or partially submerged by water. Snags also includes submerged large rocks (of greater than 500 mm in two dimensions).



Post works rehabilitation of site

12. DPI Fisheries recommends that, if Department of Industry - Crown Lands and Water Division authorise the works, the approval incorporates a condition that requires the site to be rehabilitated and stabilised at the completion of the works including:
- Removal of surplus construction materials and temporary structures from the site (other than silt fences and other erosion and sediment control devices); and
 - Appropriate maintenance of erosion and sediment control devices until the site has stabilised.
- Reason – To ensure that habitats are restored as quickly as possible, public safety is not compromised, aesthetic values are not degraded and sediment inputs into the waterway are reduced.*

Fish kill contingency

13. DPI Fisheries maintains a fish kill database. To limit the potential of a fish kill incident, DPI Fisheries recommends that the proponent be advised to undertake a visual inspection of the waterway for dead or distressed fish (indicated by fish gasping at the water surface, fish crowding in pools or at the creek's banks) twice daily during the works. Observations of dead or distressed fish should be immediately reported to the Contact Officer by Department of Industry - Crown Lands and Water Division. If a fish kill occurs, DPI Fisheries recommend works cease until the issue causing the kill is rectified.
- Reason – Fish kills are also potentially contentious incidents from the public perspective. DPI Fisheries needs to be aware of fish kills so that it can assess the cause and recommend ways to mitigate further incidents in consultation with relevant authorities. Work practices may need to be modified to reduce the impacts upon the aquatic environment.*