

TITLE: [PR-CM] Development Application DA10/0766 for Drainage, Shed, Stables, Horse Training Track and Fencing at Lot 1 DP 789618, No. 138 Cobaki Road, Cobaki

ORIGIN:

Development Assessment

FILE NO: DA10/0766 Pt1

SUMMARY OF REPORT:

Council is in receipt of a Development Application for drainage, shed stables, horse training track and fencing works at the subject site. Following receipt of this application it became clear that earthworks have also been undertaken on the site, however these were described as 'top- dressing' in the submitted application.

Drainage and earthworks were carried out on the site and were brought to Council's attention by residents in the locality. Council requested the applicant to stop work and submit a development application.

The proposal is defined as an 'animal establishment', works for drainage and landfill, and 'earthworks' in accordance with the Tweed Local Environmental Plan 2000 (LEP 2000).

Earthworks, works for drainage and landfill, and animal establishment are listed under Item 2- allowed only with consent under the 1(a) Rural zoning provision for this area.

The proposed development has issues regarding the earthworks undertaken on the site, specifically relating to the importation of fill to a flood prone area. The total impact of the development could not be assessed given the lack of detail provided to Council with respect to a Flood Impact Assessment.

The applicant provided a Flood Impact Assessment prepared by Opus which was referred to Council's Planning and Infrastructure Engineer who commented that '*the FIA (Flood Impact Assessment) provides no hydraulic analysis to demonstrate that the works will have no adverse impact on local or regional flood behaviour.*' In addition to this, it is stated that '*the FIA's impact assessment is based on the assumption that the works achieved a balanced cut/fill. This is not the case, as 150 truckloads of fill have been imported to the site.*'

Having regard to the comments received, it is considered that the Flood Impact Assessment submitted is not adequate and does not satisfactorily address the Request for Further Information. As such, the works carried out cannot be considered acceptable when assessed against the provisions of this DCP. The development could potentially set an unwarranted precedent for works to be carried out on flood liable land without the proper assessment of these works impact on the surrounding area.

The proposal was notified to adjoining owners for a period of 14 days. A number of submissions were received by an adjoining neighbour during the notification period.

Having regard to assessment of the development against Tweed LEP 2000 and objections received following notification, the proposal is not considered suitable and therefore the subject development is recommended for refusal.

RECOMMENDATION:

That:

- A. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 104(2)(a) of the Local Government Act 1993, because it contains personnel matters concerning particular individuals (other than councillors).**
- B. Development Application DA10/0766 for drainage, shed, stables, horse training track and fencing at Lot 1 DP 789618, No. 138 Cobaki Road, Cobaki be refused for the following reasons:**
 - 1. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be compliant with Environmental Planning Instruments.**

It is Council's view that the proposed development does not satisfy the provisions contained within:

The Tweed LEP 2000:

- **Clause 4: Aims of this plan – The earthworks and works carried out for drainage and landfill undertaken have been undertaken without consent. It has not been demonstrated that the development sustains economic development of the area without compromising the area's environmental and rural residential amenity qualities. Consequently it is considered that the development does not meet aim (d) of this Clause.**
 - **Clause 5: Ecologically sustainable development- The works carried out on the site are not considered to be in accordance with objective (a) the precautionary principle of this clause.**
 - **Clause 8(1): Consent Considerations- Council are not satisfied that the development will not have an unacceptable cumulative impact on the community, locality or catchment arising from the earthworks and works for drainage and landfill carried out on the site, and the impact that this may have with respect to flooding in the area.**
 - **Clause 34: Flooding- It has not demonstrated that the works carried out would not increase the risk or severity of flooding of other land in the vicinity, in accordance with Part 2 (b) of this Clause.**
- 2. Insufficient information has been supplied to enable proper assessment of the application.**

- 3. In accordance with Section 79C (1) (e) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be in the public interest.**

It is in the broader general public interest to enforce the standards contained within the Development Control Plan 2008 and Tweed LEP 2000 specifically as it relates to development controls within Tweed Shire.

- C. A further report be submitted to Council regarding options for enforcement actions, including rectification and/or restoration of the site regarding the works undertaken without development consent.**

REPORT:

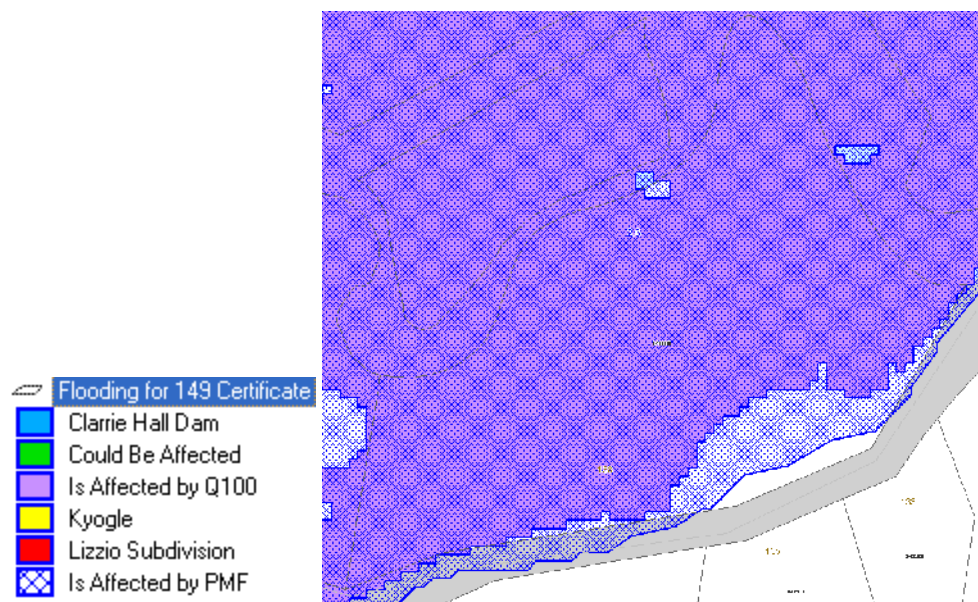
Applicant: Mr SI Fraser
Owner: Mr Shane I Fraser
Location: Lot 1 DP 789618, No. 138 Cobaki Road, Cobaki
Zoning: 1(a) Rural
Cost: \$80,000

BACKGROUND:The Subject Site

The subject land is described as Lot 1 DP 789618 at No. 138 Cobaki Road, Cobaki and has a total area of approximately 55.33ha. The site has a 425 metre frontage to Cobaki Road at its southern boundary and is defined to the north by Cobaki Creek. The subject site is irregular in shape and has a relatively level topography, with the exception of the area surrounding the dwelling, which is raised by approximately 3-5 metres from the remainder of the site. Improvements to the site include a dwelling and associated outbuildings to the roadside boundary.

Site Constraints

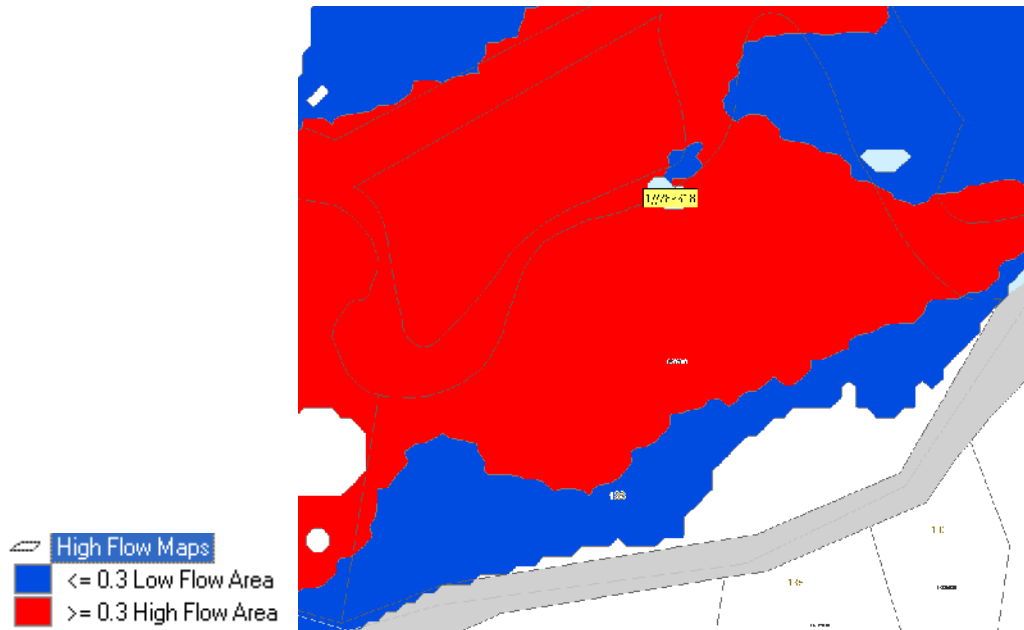
The site is located within an area which is within Tweed Shire Council's Q100 flood level as per Development Control Plan (DCP) A3- Development of Flood Liable Land. This flood level covers the majority of the site with exception of the current dwelling location, which is raised from the surrounding area. The Probable Maximum Flood (PMF) level also covers the majority of the site.



Area of site covered by 1:100 Flood level and PMF flood level.

In addition to this, the subject site is also demonstrated as being located on land designated as High and Low flow areas as per DCP A3- Development of Flood Liable Land. This DCP indicates that development is only permissible within a high flow area if

the ground level is not altered by more than 300mm (for local drainage purposes) or obstruct flood flows.



High and Low flow areas over the subject site.

Councils mapping system indicate that the subject site is constrained by Class 1,2 & 5 Acid Sulfate Soils (ASS). Tweed Local Environmental Plan 2000 (TLEP 2000) indicates that works below the ground surface in Class 2 ASS areas as being specified works which must not be carried out without development consent.



Class 1,2 & 5 Acid Sulfate Soils on the site.

The Proposed Development

Drainage and earthworks were carried out on the site, and were brought to Council's attention by nearby residents. Council officers subsequently requested the owners stop work and submit a development application.

The current Development Application provides for drainage works, to erect a shed and stables, as well as a horse training track and fencing on the subject site. The application was lodged on 25 November 2010.

The proposal includes:

- Works which are described as improvements to drainage on the site. This involves using an excavator to clear out the existing drains and laying two (2) 750mm pipes to aid the flow of water.
- The applicant indicated that the drain was widened to create a dam swimming area to aid the training of horses on the site. This dam has a total area of approximately 512m² and has a capacity of 1075m³. In addition to this, a overflow drain is proposed off the artificial water body to Cobaki Creek.
- A raised sand jog track is proposed around the site. The submitted plans demonstrate that this will be approximately 40m wide and will run in a oval shape around the site.
- The applicant has indicated that undulations to the centre of the site are to be top-dressed in order to facilitate the drainage of water to the low end of the paddock. It is stated that these earthworks are a maximum of 250mm deep, and only a 'small amount' of areas require attention.
- A 309m² stable building is proposed with maximum height of 5.2m. This building contains eight (8) stables, a store and a tie-up area.
- A 96m² ancillary shed is proposed.
- New fencing is proposed to the site.
- The planting of native vegetation through approximately 100 native trees to the roadside boundary is proposed.

Due to lack of detail provided with the application, it is not possible to fully ascertain or assess the degree of works undertaken, in particular with respect to earthworks and works for drainage and landfill. Much of the above work had been carried out prior to the application being lodged.

Site History

0045/91B Building Application – shed- Approved - 30/01/1991

1309/90B Building Application – dwelling. Approved - 29/11/1990

1260/90B Building Application – shed. Approved - 9/11/1990

Public Submissions

The subject development attracted a number of separate submissions from the owners of one neighbouring property following exhibition of the application. The objections were focused on the works carried out prior to lodgement, with particular attention to the

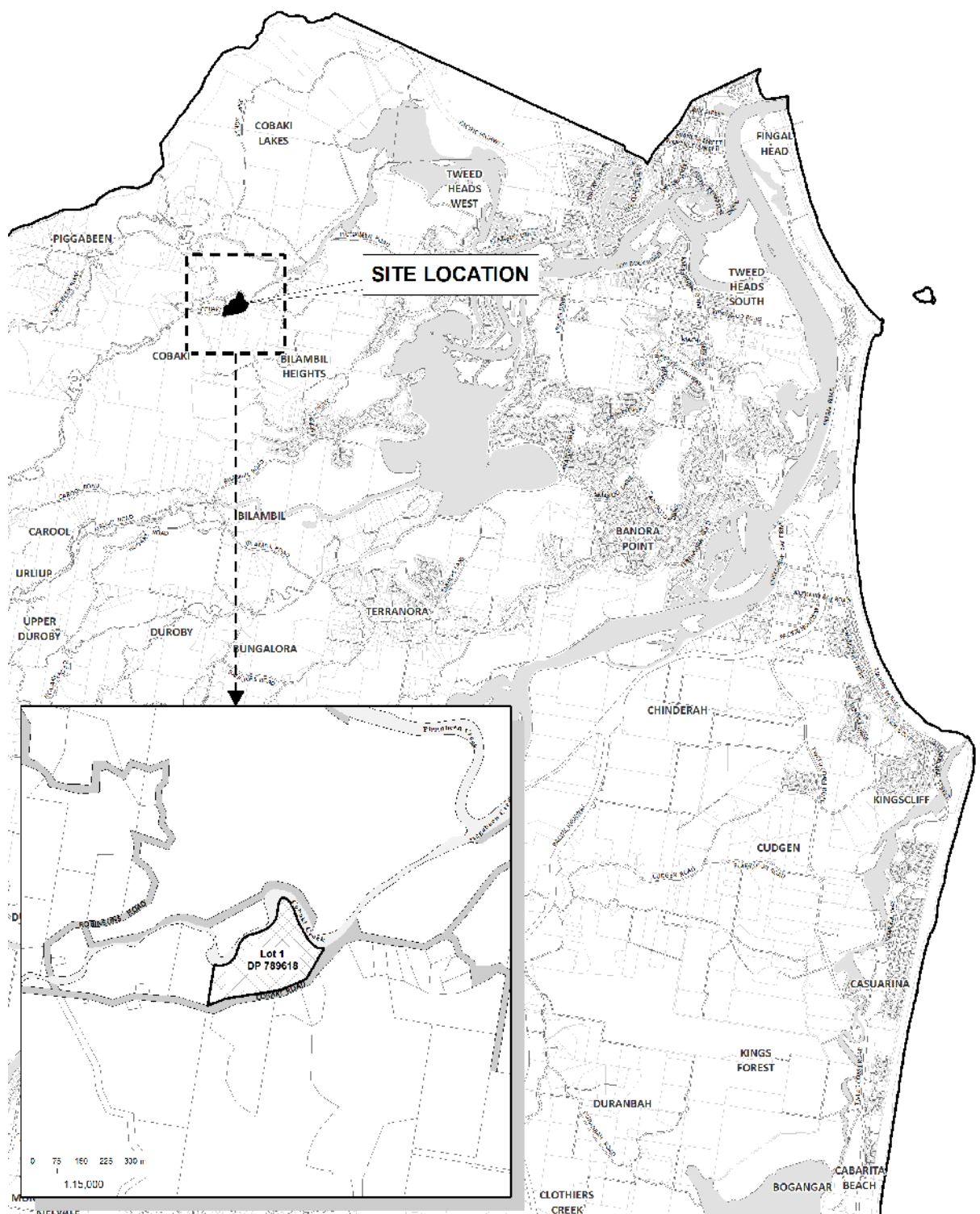
earthworks on the site, the drainage works undertaken, the digging and spreading over the site of acid sulfate soils, the proposed trotting track and fencing.

In addition to this, the objectors have submitted correspondence between them and the applicant prior to a Development Application being submitted, and a factsheet outlining the 'Top 10 Common Law Drainage Problems between Rural Neighbours' from Ontario Ministry of Agriculture, Food & Rural Affairs. A number of photographs were also submitted demonstrating the extent of the works undertaken on the site.

Summary

Having regard to assessment of the development against Tweed LEP 2000 and Development Control Plan A3, and objections received following notification, the proposal is not considered suitable and therefore the subject development is recommended for refusal.

SITE DIAGRAM:



Locality Plan

Lot 1 DP 789618
No.138 Cobaki Road, Cobaki

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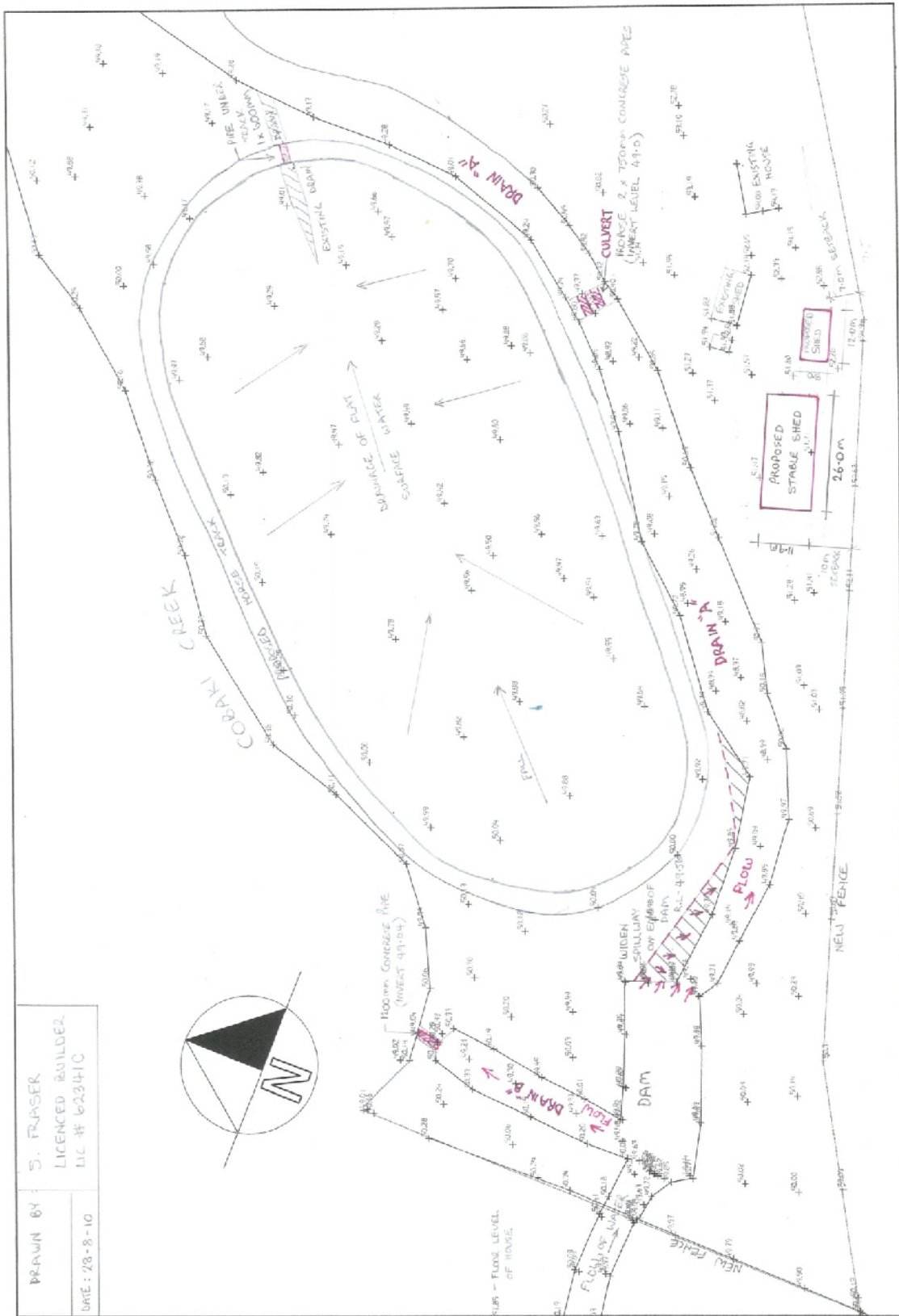
Cadastral: 04 August, 2011
© Land and Property Management Authority (LPMMA)
© Tweed Shire Council.
Boundaries shown should be considered approximate only.

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1:75,000 @ A4 Portrait
CGS95 GDA94 - NOT DEPICTED
Map Projection: Universal Transverse Mercator
Datum: Geocentric Datum of Australia, 1994
Grid: MGA 94 of Australia, Zone 52

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DEVELOPMENT PLANS:

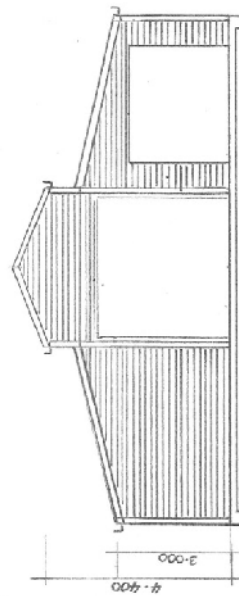
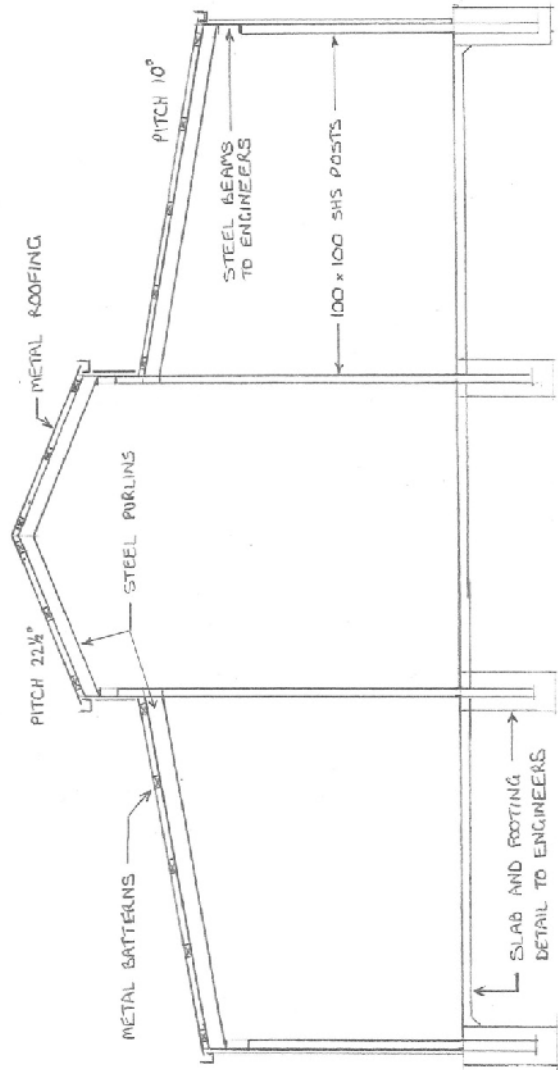
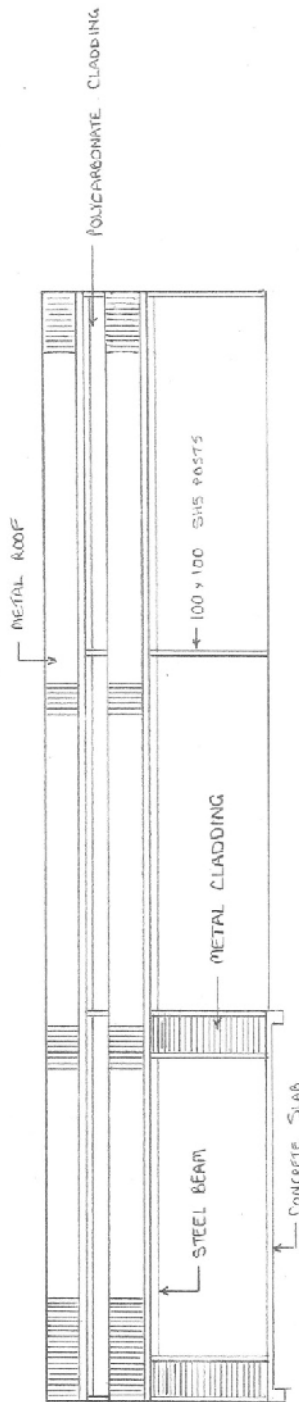


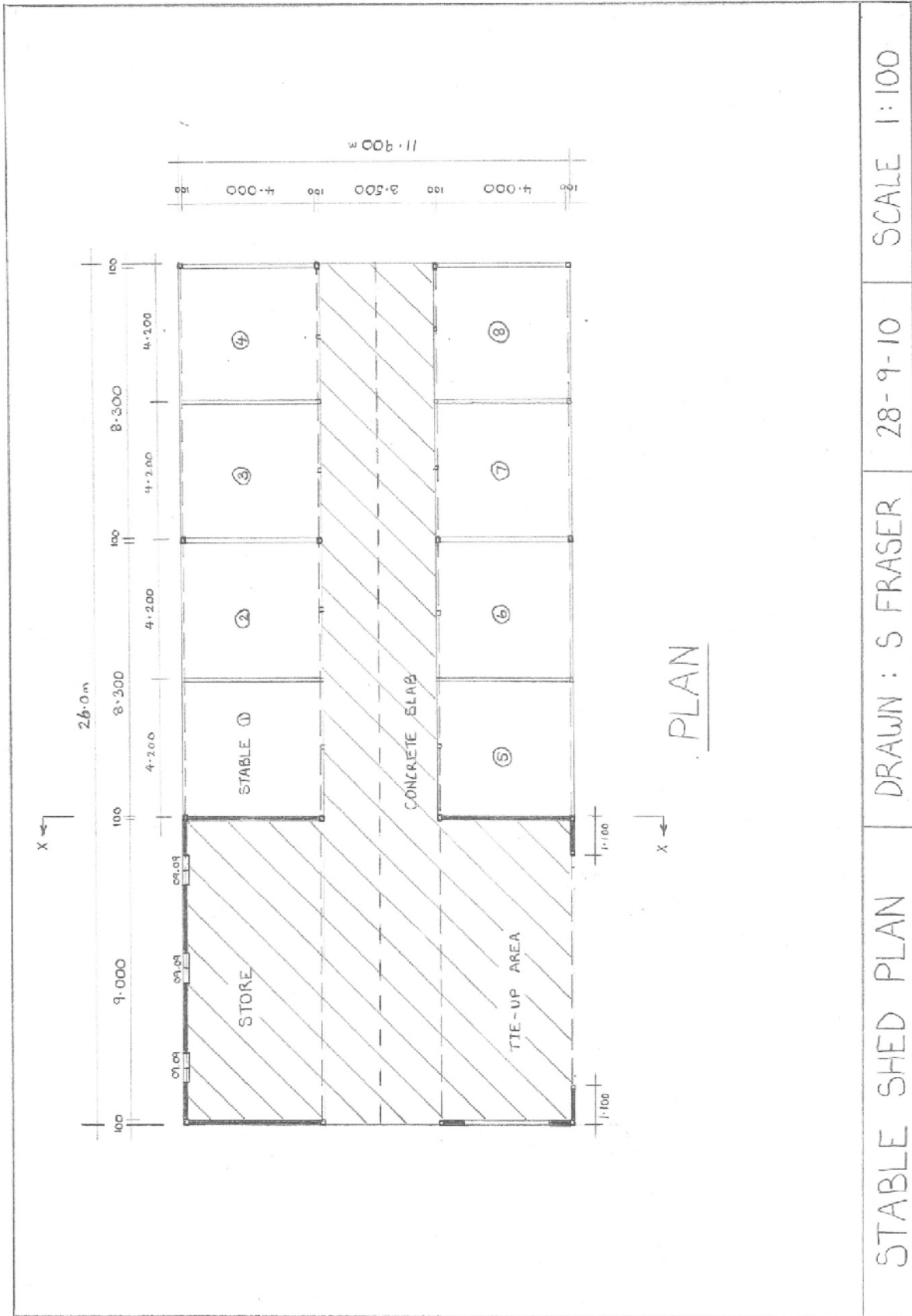
Scale 1:800

28-9-10

DRAWN: S FRASER

ELEVATION & SECTION OF STABLES





SCALE 1:100

28-9-10

DRAWN : S FRASER

STABLE SHED PLAN

CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

(a) (i) The provisions of any environmental planning instrument

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan.

The vision of the plan is “the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”.

One of the aims of the plan is:

- (d) to encourage sustainable economic development of the area of Tweed compatible with the area’s environmental and residential amenity qualities.

Substantial earthworks and works for drainage and landfill have been undertaken on the site, including the displacement of acid sulfate soils without consent. As such, it is not considered that it has been demonstrated that the proposed development sustains economic development of the area without compromising the area’s environmental and rural residential amenity qualities.

Clause 5 - Ecologically Sustainable Development

The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms.

It is not possible to ascertain that irreversible environmental damage has not been caused by the earthworks and works for drainage and landfill undertaken given the flooding and soils constraints of the site as well as the information submitted on the file.

Clause 8 - Zone objectives

This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:

- (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
- (b) *it has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and*

- (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

Although generally consistent with the relevant 1(a) zone objectives, the cumulative impact of the development is a concern. Consideration has been given to other aims and objectives of the plan that are relevant to the development elsewhere in this report.

Council officers have not been adequately satisfied that the development will not have an unacceptable cumulative impact on the community, locality or catchment arising from the earthworks and works for drainage and landfill carried out on the site, and the impact that this may have with respect to flooding in the area.

Clause 11 - Zone objectives

The subject site is located within the 1(a) Rural zone.

The primary objectives of the 1(a) Rural zone are *'to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development' and 'to protect rural character and amenity.'*

The proposed animal establishment, earthworks and works for drainage and landfill undertaken on the site are both listed under Item 2- allowed only with consent under the zoning provision for this area.

Clause 15 - Essential Services

This clause of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. Having regard to the proposed development, on a site which currently has a approved dwelling, it is considered that adequate services are available to the proposed shed stables and shed.

Clause 16 - Height of Building

Clause 16 of the TLEP requires development to be undertaken in accordance with a building height plan, which identifies the site as being limited to three storeys. The proposed dwelling complies with this criterion at a maximum height of approximately 5.3m from finished ground level.

Clause 17 - Social Impact Assessment

The scale of this development proposal does not necessitate a social impact assessment.

Clause 35 - Acid Sulfate Soils

The subject site exhibits Class 2, 3 & 5 acid sulfate soils with respect to this clause. The area of the subject site where the dam/ horse swimming artificial waterbody was created is classified as containing Class 2 and Class 5 acid sulfate soils.

Works carried out on the site include the excavation of an artificial waterbody to a depth of two (2) metres and an overall area of 512m².

The objectives of this clause are outlined as;

- to manage disturbance of acid sulfate soils to minimise impacts on water quality, ecosystems, infrastructure and agricultural and urban activities.
- to require special consideration and development consent for works, including some agricultural and infrastructure-related works, that would disturb soils or ground water levels in areas identified as having acid sulfate soils.
- to provide for a regime of self-regulation by those organisations which have demonstrated to the Council their ability to manage acid sulfate soils issues.

A person must not, without development consent, carry out works on land shown as being Class 1, 2, 3, 4 or 5 land, the works specified for the class of land in the following Table:

Class of land	Specified works
1	Any works
2	<ul style="list-style-type: none"> • Works below the ground surface • Works by which the watertable is likely to be lowered
3	<ul style="list-style-type: none"> • Works beyond 1 metre below the natural ground surface • Works by which the watertable is likely to be lowered beyond 1 metre below the natural ground surface
4	<ul style="list-style-type: none"> • Works beyond 2 metres below the natural ground surface • Works by which the watertable is likely to be lowered beyond 2 metres below the natural ground surface
5	<ul style="list-style-type: none"> • Works within 500 metres of Class 1, 2, 3 or 4 land which are likely to lower the watertable below 1 metre AHD in adjacent Class 1, 2, 3 or 4 land

The consent authority must not grant consent to works specified above unless it has considered:

- (a) a preliminary soil assessment to ascertain the presence or absence of acid sulfate soils within the area of proposed works, unless the applicant agrees that acid sulfate soils are present within the area of proposed works, and
- (b) where the preliminary soil assessment ascertains (or the applicant agrees) that acid sulfate soils are present, the adequacy of an acid sulfate soils management plan prepared in accordance with guidelines, as amended from time to time, published by the Environment Protection Authority, and

- (c) the likelihood of the proposed development resulting in the oxidation of acid sulfate soils and discharge of acid water from the area of the proposed works,

Having regard to the works carried out on the site, in particular on the Class 2 & 5 land on the site, development consent was required. Assessing the information submitted on the file with respect to ASS disturbance, it has not been adequately demonstrated that the disturbance of acid sulfate soils will not have a negative environmental impact on the locality.

Consequently, it is considered that the works carried out have not been in accordance with the objectives or provisions of this clause.

Other Specific Clauses

Clause 34 – Flooding

Clause 34 of the TLEP 2000 seeks to minimise flood damage to future development occurring on flood liable land along with the adverse effects of flooding on a community. The applicant has submitted information, indicating that approximately 1500m³ of fill has been imported to the site.

The site is identified on Council's mapping as being affected by the Probable Maximum Flood (PMF) level and as being susceptible to the 1 in 100 year flood level, with that level identified as 2.6 metres AHD.

This clause states that where land is likely to be subject to flooding, Council must not grant consent to development on that land unless it has considered the following:

- (a) *the extent and nature of the flooding hazard affecting the land,*

The subject site is predominately located within an area identified as Councils Q100 and PMF flood level as well as being within a high flow area for flood water.

- (b) *whether or not the development would increase the risk or severity of flooding of other land in the vicinity,*

This application was referred to Councils Planning and Infrastructure engineer who provided comments with respect to flooding. It was noted that fill had been imported to the site, removing the ability to assess the works as having no net loss of flood storage or overland flow capacity. The applicant was required to demonstrate to Council that the works carried out would not adversely impact on local flood behavior.

A Flood Impact Assessment was prepared by the applicant in this regard, but did not adequately address the importation of fill to the site or provide hydraulic analysis to demonstrate that the works will have no adverse impact on local or regional flood behavior.

Based on this, it is not possible to satisfactorily conclude that the development would not increase the risk or severity of flooding of other land in the vicinity.

(c) *whether the risk or severity of flooding affecting the development could be reasonably mitigated,*

The submitted information indicates that the applicant has cleared some of the drainage channels on the site and has proposed to establish a number of culvert pipes in order to improve the drainage of water through the site.

No technical information with respect to the improved flow rates or how these would offset the fill imported on the site has been provided. Therefore, it is not possible for Council to conclude that the severity of flooding affecting the development could be reasonably mitigated.

(c) *the impact of the development on emergency services,*

The subject development is not considered to have an immediate impact upon the provision of emergency services, having regard to the lack of any residential development proposed.

(e) *the provisions of Section A3 - Development of Flood Liable Land of Tweed Development Control Plan.*

The development is assessed against the provisions of DCP A3 elsewhere in this report. It is concluded that the information submitted by the applicant with respect to flooding is not adequate, and the works carried out cannot be considered acceptable when assessed against the provisions of this DCP.

Clause 39A – Bushfire protection

The object of this Clause is “*to minimise bushfire risk to assets and people and to reduce bushfire threat to ecological assets and environmental assets*”.

Council's mapping system demonstrates that the site is minimally mapped as being located within a bushfire prone area buffer of 30 to 100 metres. However as this buffer surrounds bushfire prone land which is located to the other side of Cobaki Road, it is considered that there is an adequate vegetation free buffer area between the subject development and the bushfire vegetation. Furthermore, the proposed stable and shed buildings are not located in the area mapped as being with the bushfire buffer zone. On this basis referral to the NSW RFS was not considered necessary.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

This clause states that council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the

proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land.

The subject site is listed on Council's GIS Enlighten system as being partially within an area which is identified as being a Regionally Significant Farmland. The GIS enlighten system also demonstrates that the agricultural suitability of the land is both land suitable for grazing and not for agriculture and land not suited for agriculture. It is considered that generally, the site consists of low quality agricultural land suitable for use for grazing. Therefore, the development would not lead to a loss of prime crop and pasture land.

Having regard to the works carried out on the site, it is unclear as to what impact these would have on adjoining or adjacent land as adequate flood hydrology information has not been submitted with this application. It is therefore not possible to assess the works as not having any negative impact on the surrounding area.

Clause 15: Wetlands or Fishery Habitats

Clause 15 of the NCREP is applicable to any application to carry out development adjoining a river or stream or within the drainage catchment of a river or stream. As this site adjoins Cobaki Creek and is located within its drainage catchment, this Clause is considered to apply to the proposal.

This Clause requires the applicant to consider the impact of the development upon the wetland. Application documentation does not address this matter.

Clause 32B: Coastal Lands

The proposal is considered consistent with Clause 32B as it is deemed unlikely that it will impede public foreshore access to the beach or result in significant overshadowing of adjacent open space. The proposal does not contradict the strategic aims of the NSW Coastal Policy, the Coastline Management Manual or the North Coast: Design Guidelines.

SEPP No 71 – Coastal Protection

The matters for consideration under Clause 8 of this SEPP have been addressed and summarised below:

The subject land does not have frontage to the coastal foreshore reserve and therefore many of the objectives from a) to p) do not apply to the subject site.

However, of note is matter for consideration (d):

The suitability of the development and its type, location and design and its relationship with the surrounding area.

The earthworks carried out are not considered suitable in its location, design and relationship with the surrounding area due to the impact that the

development could have on the flood water in the area or the surrounding properties.

Previous discussions in this report raise issues of non-compliance of the development with the provisions of Tweed LEP 2000 and Council's Development Control Plan A3.

SEPP (Rural Lands) 2008

This SEPP introduces rural planning principles to facilitate the orderly and economic use and development of rural lands for rural and related purposes. It provides controls for rural subdivisions and identifies State significant agricultural land. It also implements measures designed to reduce land use conflicts.

Provisions contained within this SEPP must be taken into account in consideration of granting consent for a dwelling on rural land. Measures designed to reduce these land use conflicts are aimed at creation of residential land uses through subdivision on land that is adjacent existing farming activities.

The subject site contains a portion of Regionally Significant Farmland. However, this SEPP does not specifically apply to this development as no dwellings or subdivision is proposed on rural land.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

The subject site is zoned RU2- Rural Landscape under the Draft Tweed LEP 2010. The objectives for this zone include provisions to encourage sustainable primary industry production, to maintain the rural landscape character of the land, to provide for a range of compatible land uses and to provide for a range of tourist accommodation-based land uses.

The drainage and earthworks work proposed and undertaken is listed under Clause 4 (Prohibited) of the indicated zone provisions as 'any other development not specified in item 2 or 3'. As such this element of the proposal is considered to be contrary to the provisions of the zone.

The farm buildings proposed as part of this application are listed under Clause 3 Permitted with Consent and are acceptable under the Draft LEP.

(a) (iii) Development Control Plan (DCP)

Tweed Development Control Plan

A3-Development of Flood Liable Land

The subject site is indicated as being flood liable and as such the provisions of this DCP apply to the proposed development. Specifically the site, is flood affected with a design flood level of 2.6m AHD. In addition to this the site is within an area identified as Councils PMF flood level as well as being within a high flow area for flood water.

The application was referred to Council's Planning and Infrastructure engineer for comment, having regard to the fill imported to the site, and the possible impact that this may have on the area. Arising from this the applicant was requested to either remove the fill imported to the site or provide Council with a Flood Impact Assessment considering the impacts of the works on flood events originating from Cobaki Creek as well as local overland flow catchments.

The applicant provided a Flood Impact Assessment prepared by Opus which was referred to Council's Planning and Infrastructure Engineer for comment. In a memo dated 25 July 2011, it is indicated that *'the FIA (Flood Impact Assessment) provides no hydraulic analysis to demonstrate that the works will have no adverse impact on local or regional flood behaviour.'* In addition to this, it is stated that *'the FIA's impact assessment is based on the assumption that the works achieved a balanced cut/fill. This is not the case, as 150 truckloads of fill have been imported to the site.'*

Having regard to the comments received above, it is considered that the Flood Impact Assessment submitted is not adequate and does not satisfactorily address the Request for Further Information. As such, the works carried out cannot be considered acceptable when assessed against the provisions of this DCP.

A11-Public Notification of Development Proposals

This Development Application was notified for a period of 14 days. One submission was received during the notification period.

(a) (iv) Any Matters Prescribed by the Regulations

Clause 92(a) Government Coastal Policy

The subject site is governed by the requirements of Clause 92(a) Government Coastal Policy. The development does not pose a threat to coastal processes.

Clause 92(b) Applications for demolition

The Development Application does not contain any provisions for demolition on the site.

Clause 93 Fire Safety Considerations

The subject application was referred to Council's Building Section, who provided recommended conditions with respect to the proposed stable and shed development. As such the proposal is considered to be acceptable in this regard.

Clause 94 Buildings to be upgraded

Not applicable. The proposal does not include the upgrade of any buildings.

(a) (v) **Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),**

Tweed Shire Coastline Management Plan 2005

Not applicable.

Tweed Coast Estuaries Management Plan 2004

Not applicable.

Coastal zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 meeting)

The relevant management plan is the *Coastal Zone Management Plan for Cobaki Broadwater and Terranora Broadwater*.

The objectives of the Plan are:

- To improve water quality and ecosystem health by revegetation/regeneration of riparian vegetation, prioritising the mid – transition zones of all creeks and their ephemeral drainage lines.
- To improve rural stormwater discharge quality and ecosystem health by facilitating and supporting best practice land management and functional On-site Sewage System Facilities (OSSF).
- To improve urban stormwater discharge quality by implementing a Stormwater Quality Improvement Device (SQID) retrofitting strategy in existing priority areas, and ensuring future development does not contribute further to the existing pollutant loads.
- To restore riparian habitat to enhance connectivity of wildlife corridors.
- To protect and enhance shorebird habitat and provide additional high tide roosting sites.
- To increase and enhance public access to foreshores and low-impact recreation activities.
- To protect viable commercial fishery industries by preserving and improving fish habitat, including marine vegetation such as seagrass and saltmarsh and improving fish passage.
- To stabilise degraded creek bed and banks, to restore their natural values, improve downstream instream health, and reduce the infilling of the broadwaters.
- To increase community awareness and protection of areas important to Aboriginal cultural heritage.

Comment

The applicant has indicated that the works for drainage and landfill will improve drainage through the site by providing cleared drain paths and culvert pipes. As outlined elsewhere in this report, the applicant was requested to demonstrate to Council that the works carried out would not adversely impact on local flood behavior. The information provided in this regard did not adequately address this in order to establish that the works will have no adverse impact on local or regional flood behavior.

It is also questionable that the works undertaken, in particular the excavation of Class 2 Acid Sulfate Soils will improve the water quality and ecosystem health.

Having regard to the above, from the information submitted on the file, it is not clear as to whether or not the proposed development is in accordance with the objectives of the Coastal zone Management Plan for Cobaki and Terranora Broadwater.

- (b) **The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

Earthworks

The application details state that 150 loads of fill, totalling approximately 1500m³ of fill has been imported to the site as part of this application. As mentioned previously in this report, sufficient information has not been submitted in order to demonstrate that these earthworks will not have a detrimental impact on the surrounding natural or built environment.

- (c) **Suitability of the site for the development**

Surrounding Landuses/Development

The subject site is located in an area which is predominately rural in nature. The immediate surrounding allotments all contain an rural or rural residential use. The proposed stables and shed are considered suitable to the site, however, as addressed elsewhere in this report the earthworks carried out on the site have not been demonstrated to have no negative impact on the surrounding properties.

Consequently, the development cannot be assessed as being unlikely to result in any significant adverse impacts to the surrounding natural and built environment.

Natural Hazards

The subject site is indicated as being flood liable under the provisions of DCP A2 as outlined above. As outlined in more detail elsewhere in this report it is considered that the proposal has not been demonstrated as being in accordance with the adopted provisions of this DCP or other Council Policy in

relation to development on flood liable land, having regard to the importation of approximately 1500m³ of fill.

(d) Any submissions made in accordance with the Act or Regulations

The application was not considered integrated and therefore not referred to public agencies for comment.

The application was notified to adjoining owners for a two-week period from 6 to 20 December 2010 in accordance with DCP A11. The subject development attracted a number of separate submissions from the owners of one neighbouring property following exhibition of the application.

Issues raised include:

- the works being carried out without Development Consent,
- the earthworks on the site, which are considered to have an impact upon their property,
- the drainage works undertaken,
- the digging and spreading over the site of acid sulfate soils,
- the proposed trotting track,
- the fencing to the roadside boundary.

In addition to this, the objectors have submitted correspondence between them and the applicant prior to a Development Application being submitted, and a factsheet outlining the 'Top 10 Common Law Drainage Problems between Rural Neighbours' from Ontario Ministry of Agriculture, Food & Rural Affairs. A number of photographs were also submitted demonstrating the extent of the works undertaken on the site. A copy of this submission is provided as a Confidential attachment.

(e) Public interest

The concerns raised within the submissions with respect to the impact the importation of fill may have on surrounding properties are considered valid and contribute to the reasons for refusal. The development could potentially set an unwarranted precedent for earthworks to be carried out on flood liable land without the proper assessment of these works impact on surrounding land. Therefore it is in the public interest for this application to be refused.

OPTIONS:

1. Refuse this application in accordance with the recommendation for refusal.
2. Grant in-principle support for the proposal, and that the officers bring back a further report to Council with recommended conditions of development consent.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant not be satisfied with the determination they have the right to appeal the decision in the NSW Land & Environment Court. Given the complexities of the

unauthorised works carried out to date, a further report will be submitted to Council regarding options for enforcement action, including rectification and/or restoration of the site.

POLICY IMPLICATIONS:

The development could potentially set an unwarranted precedent for earthworks to be carried out on flood liable land without the proper assessment of these works impact on surrounding land.

CONCLUSION:

The application submitted is deficient in detail. However, sufficient information has been submitted to determine that the nature of the proposed earthworks are unsuitable for the site. This unsuitability is reflected in the proposal's non compliance with the statutory and strategic framework applicable to the application.

Having regard to assessment of the development against Tweed LEP 2000 and Development Control Plan A3, and objections received following notification, the proposal is not considered suitable and therefore the subject development is recommended for refusal.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).

- 1. Confidential Attachment** - Detailed submission from the owners of a neighbouring property in respect of DA10/0766 (ECM 37201077)
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