

**Addendum Report**

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**REPORTS THROUGH THE GENERAL MANAGER**

**REPORTS FROM THE DIRECTOR PLANNING AND REGULATION**

**a11 [PR-CM] Class 1 Appeals - Section 96 Applications DA09/0344.05 and DA09/0290.06 refused under delegated authority relating to the original development consents for the Construction of New Two Storey Dwelling Houses at Lot 11 DP 24564, No. 4 Creek Street and Lot 10 DP 24564, No. 6 Creek Street, Hastings Point**

**ORIGIN:**

**Building and Environmental Health**

**FILE NO: DA09/0290 Pt1 and DA09/0344 Pt1**

**SUMMARY OF REPORT:**

Council granted the original development consents (both for new two storey dwelling houses), but refused the most recent Section 96 modification applications under delegated authority for the properties, Nos. 4 and 6 Creek Street, Hastings Point.

Construction commenced on both sites in mid 2010. Following receipt of a complaint claiming that the height and amount of fill on the subject sites were not in accordance with the relevant development consents, Council officers commenced investigations and compliance actions to rectify this matter.

Following the refusal of the respective Section 96 applications for both sites, and the failure to rectify the unauthorised fill action, on 4 October 2011, Council issued a letter to the owner of both sites, Walter Elliot Holdings Pty Ltd indicating Council's intention to serve an order No. 15 of section 121B of the Environmental Planning and Assessment Act 1979.

Solicitors acting on behalf of the site owners lodged respective Class 1 appeals in the NSW Land and Environment Court (LEC) on 18 October 2011 in respect of Council's refusal under delegated authority of the most recent Section 96 applications for both Nos. 4 and 6 Creek Street.

The initial mention for both appeals was held in the LEC through teleconference on 7 November 2011. Council officers and solicitors provided initial instructions to the Court. The LEC Assistant Registrar agreed that the matters be heard together, and the following directions were then made:

1. Respondent to file and serve a Notice of Appearance by 11 November 2011
2. Matter listed for a further telephone call over on 14 December 2011 at 11:00am

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The Assistant Registrar informed the parties that this matter would be listed for a s34AA conciliation conference/hearing sometime around the week of 19 December 2011.

From the initial advice from Council's solicitors, the owners' solicitors have indicated that the owner of both properties is prepared to negotiate a mutually agreeable outcome with Council. On that basis, and given the minor scale of the developments, it is recommended that Council supports the engagement of solicitors to firstly seek to negotiate a mutually agreeable outcome with the proponents, and seek appropriate consent orders through the scheduled LEC proceedings.

**RECOMMENDATION:**

**That Council, in respect of the Class 1 Appeals lodged in the NSW Land and Environment Court (LEC) for the respective Section 96 applications DA09/0344.05 and DA09/0290.06, refused under delegated authority relating to the original development consents for the Construction of New Two Storey Dwelling Houses at Lot 11 DP 24564, No. 4 Creek Street and Lot 10 DP 24564, No. 6 Creek Street, Hastings Point:**

- 1. Engage its solicitors to seek to negotiate a mutually acceptable outcome with the proponents' solicitors and seek appropriate consent orders for both Class 1 Appeals as part of the scheduled Land and Environment Court proceedings.**

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**REPORT:**

The main approvals history for the subject sites have been:

No. 4 Creek Street, Hastings Point (Lot 11 DP 24564)

DA09/0344 - concrete slab on fill construction - approved on 8 October 2009 (original consent)

DA09/0344.05 - proposal for placement of additional fill material on the site to create a higher building platform beyond original consent, construction commenced - refused on 22 July 2011 (Section 96)

No. 6 Creek Street, Hastings Point (Lot 10 DP 24564)

DA09/0290 - no fill proposed, originally timber floor construction - approved on 15 July 2009 (original consent)

DA09/0290.01 - proposal to place 400m of fill and change design to concrete on ground construction - approved on 17 December, 2009 (Section 96)

DA09/0290.06 - proposal to increase the floor level and fill height, construction commenced - refused on 8 July, 2011 (Section 96)

As identified above, Council granted the original development consents (both for new two storey dwelling houses), but refused the most recent Section 96 modification applications under delegated authority for the properties, Nos. 4 and 6 Creek Street, Hastings Point.

Construction commenced on both sites in mid 2010. Following receipt of a complaint claiming that the height and amount of fill on the subject sites were not in accordance with the respective development consents, Council officers commenced investigations and compliance actions to rectify this matter.

Following the refusal of the respective Section 96 applications for both sites, and the failure to rectify the unauthorised fill action, on 4 October 2011, Council issued a letter to the owner of both sites, Walter Elliot Holdings Pty Ltd indicating Council's intention to serve an order No. 15 of section 121B of the Environmental Planning and Assessment Act 1979.

Solicitors acting on behalf of the site owners lodged respective Class 1 appeals in the NSW Land and Environment Court (LEC) on 18 October 2011 in respect of Council's refusal under delegated authority of the most recent Section 96 applications for both Nos. 4 and 6 Creek Street.

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From the initial advice from Council's solicitors, the owners' solicitors have indicated that the owner is prepared to negotiate a mutually agreeable outcome with Council. On that basis, and given the minor scale of the developments, it is recommended that Council supports the engagement of solicitors to firstly seek to negotiate a mutually agreeable outcome with the proponents, and seek appropriate consent orders through the scheduled LEC proceedings.

**OPTIONS:**

1. Defend the Appeal
2. Negotiate Consent Orders.

Council officers have recommended Option 2.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Council will be required to engage legal representation regarding the Appeal. Costs will be incurred as a result of the Appeal.

**POLICY IMPLICATIONS:**

Nil

**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](http://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).*

Nil.

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