

TITLE: [PR-CM] Compliance Matters in Relation to No. 140 Turners Road, Wardrop Valley

SUBMITTED BY: Development Assessment



Caring for the Environment

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

4	Caring for the Environment
4.1	Protect the environment and natural beauty of the Tweed
4.1.3	Manage and regulate the natural and built environments

SUMMARY OF REPORT:

Updated Information

Council at its meeting of 18 July 2013 resolved as follows:

"RESOLVED that item be deferred to the August meeting of Council."

Previous Report

Council has received a number of complaints from the owner of No. 50 Turners Road in respect of alleged unauthorised road works in the connecting, unsealed Council road and adjoining Crown road reserve, with the nearby property, No. 140 Turners Road. It was also alleged that there were a number of unauthorised commercial and residential land uses that had taken place within No. 140 Turners Road.

Council officers have interviewed the owners of both Nos. 50 and 140 Turners Road, and have made a number of site inspections.

In terms of the alleged road works, the officers consider that there is inconclusive evidence to determine exactly who undertook the works, and when they occurred, making any further legal action difficult to pursue. It is therefore recommended that no further compliance action be taken in respect of this activity.

In terms of the alleged unauthorised land uses, it has been identified that an unauthorised light industry (the on-site construction of two manufactured homes) has been commenced, and that the owner be instructed to cease this use immediately, or otherwise face more stringent enforcement action. It has also been concluded that there is currently insufficient evidence of any other unauthorised commercial or residential land uses being undertaken on the site.

RECOMMENDATION:

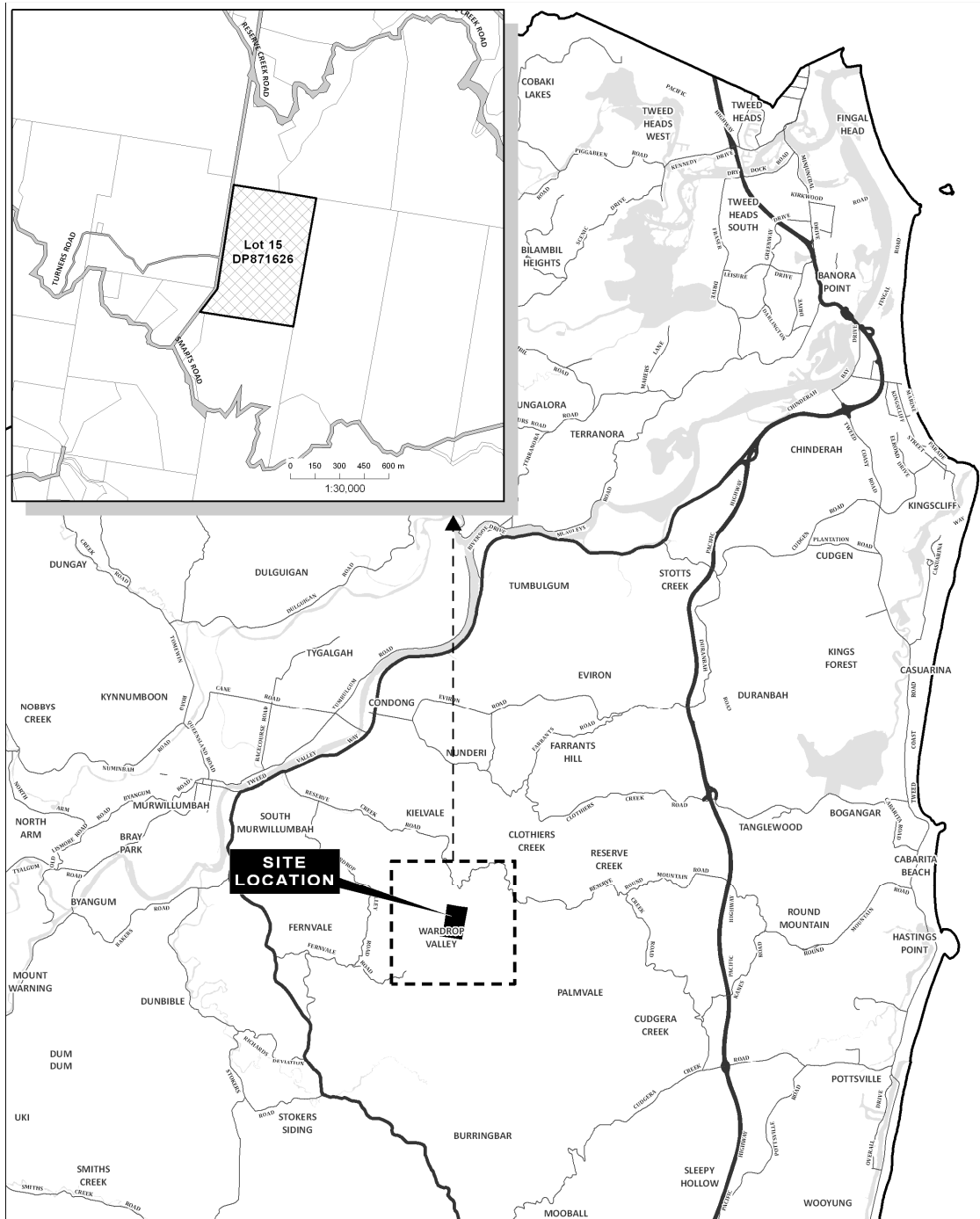
That in terms of the alleged unauthorised road works and land uses being undertaken on the unsealed Council road and Crown Reserve, leading to, and within the property, Lot 15 DP 871626, No. 140 Turners Road, Wardrop Valley, Council endorses the following:

- 1. The owner of No. 140 Turners Road be advised to cease immediately the current, unauthorised light industry use on the site (construction of manufactured homes), or otherwise be the subject of more stringent enforcement action; and**

- 2. The owner of No. 50 Turners Road be informed of the enforcement actions taken by Council in respect of No. 140 Turners Road.**

REPORT:

SITE:

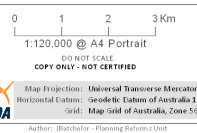


Locality Plan

Lot 15 DP 871626
No. 140 Turners Road, Wardrop Valley

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Cadastre: 24 June, 2013
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TWEED SHIRE COUNCIL

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Figure 1 - Aerial photo below showing the spatial relationship between the complainant, No. 50 Turners Road (Owner A), the connecting, unsealed Turners Road, and the site, No. 140 Turners Road (Owner B).

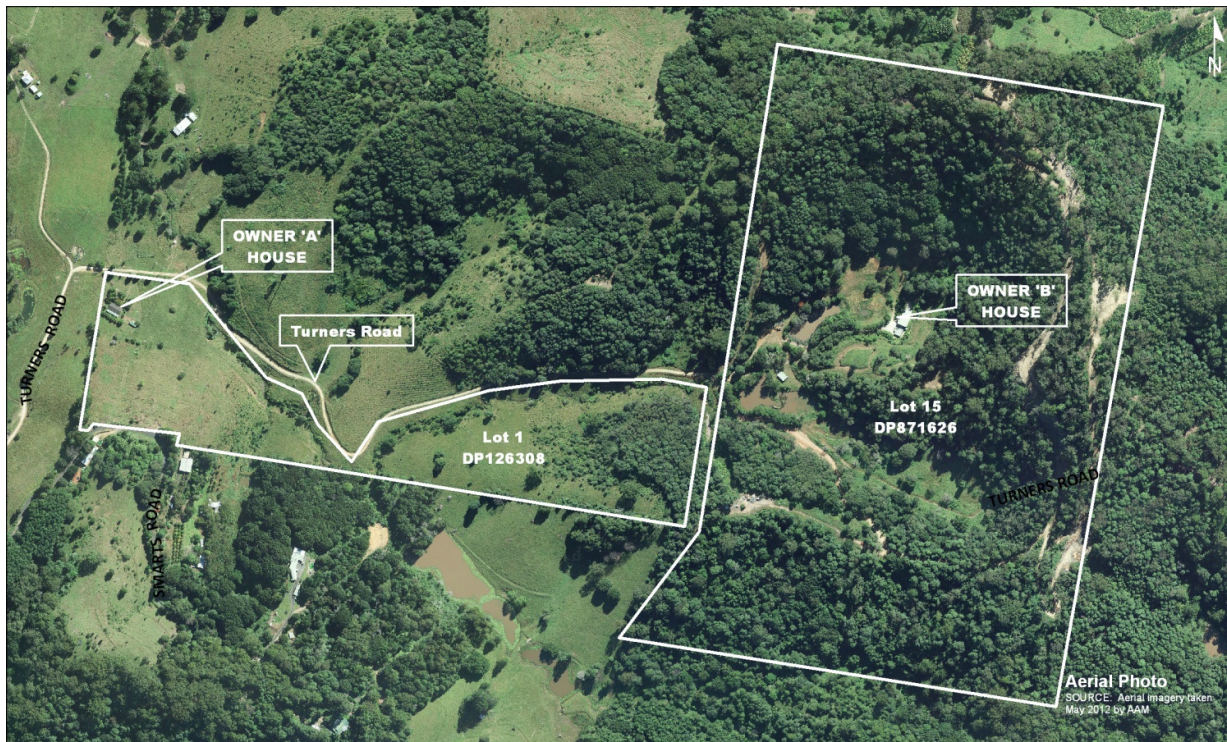


Figure 2 - Aerial photo below showing the locations of the alleged unauthorised road work issues referred to in this report along Turners Road.



Figure 3 - Aerial photo below showing the locations of the alleged unauthorised uses and works on the adjoining Crown road reserve and Right of Way, and within the premises, No. 140 Turners Road.



Site Description

Turners Road is a public rural road which runs off Smarts Road Wardrop Valley, for which Council is the roads authority.

Council only maintains the first 440 metre section of Turners Road. The remaining section, which services a number of rural properties is un-made. This limit to the maintenance of Turners Road relates to longstanding Council policy to establish "maintenance limits" for every public road in the Shire, in recognition of Council's limited sources of revenue.

The extent of the maintained section of Turners Road ends at a grid at the commencement to the property known as 50 Turners Road, which is owned by the complainant in these compliance matters.

The unsealed section of Turners Road then runs eastward towards the premises No. 140 Turners Road, for which a number of compliance complaints have been received. The road then enters into a section of Crown Road Reserve, before connecting to a right of way to the adjoining property, known as Lot 110 Turners Road.

No 140 Turners Road is a rural property, with a size of 40.41 hectares. It is currently zoned 1(a) Rural under the Tweed Local Environmental Plan 2000.

The site was the subject of a series of former banana plantations, and the owner has received an approved Private Native Forest Property Vegetation Plan (dated 3/5/2010) from the then NSW Department of Environment Climate Change and Water, to undertake rehabilitation of these former plantation areas.

Background:

Council has received a number of complaints from the owner of No. 50 Turners Road in respect of alleged unauthorised road works in the connecting unsealed Council and Crown road reserves, with the nearby property, No. 140 Turners Road. It was also alleged that there were a number of unauthorised commercial and residential land uses that had taken place within No. 140 Turners Road.

Council officers have interviewed the owners of both Nos. 50 and 140 Turners Road, and have made a number of site inspections.

Further to Council correspondence sent to the owner of No. 140 Turners Road following a site inspection of his property, the owner has replied to Council providing a response to some of the various issues raised. The owner's further response is included in the relevant issue headings. This owner has also since contacted Council's Work's Unit about Council's Section 138 Roads Act approvals processes for any future maintenance of the surface of the unsealed section of Turners Road leading to his property.

For the purposes of identification in the report below, the owner of No. 50 Turners Road will be referred to as "Owner A", and the owner of No. 140 Turners Road as "Owner B".

Please refer to Figures 1, 2 and 3 of the previous Site section for a mapped identification of the location of the subject properties and the various compliance issues.

Results of Compliance Investigations

Issue 1 – Owner A alleged that a heavy vehicle relating to Owner B's site activities had damaged the cattle grid adjoining the driveway entrance to Owner A's property.

- * Owner B claimed that he was overseas at the time that it had occurred, and that it was not related to his property, but rather the vehicles of a contractor of another user of the road, located in an adjoining property, known as Lot 110 Turners Road, who have been undertaking a private forestry use.
- * Owner B recollected an incident from 3 to 4 years ago during a period of heavy rainfall, whereby this part of Turners Road was impassable for his vehicles, so he laid down some gravel on the road in order to access his property. Owner A's family took offence to this activity and called the Police. This was the start of a series of personal issues between Owners A and B.
- * Owner B claimed that as part of a Council Works job approximately 10 years ago to seal the adjoining Smarts Road, the Council also did some grading of Turners Road from the main turn-off, through to the entrance of Owner B's property.
- * A Council Work's officer advised that he could not recall such a job, and thought that it would be unlikely that Council would undertake the grading of the unsealed section of Turners Road past Council's maintenance limit.

Recommended Action:

It is considered that this is insufficient evidence at this stage to determine how this grid was damaged, and therefore further Council compliance action would be difficult to pursue. Council's Works Unit has advised that Owner A has ultimate responsibility for the repair and maintenance of the grid.

Issue 2 – Owner A alleged that Owner B constructed a concrete bridge at a further point along Turners Road, as a more defined crossing over a water body, and that this was impacting upon the water quality and flow of the existing water body.

- * Owner B advised that he did hire contractors to construct this bridge (see photos below) in approximately 2001 to provide a safer, more accessible crossing in times of heavy rainfall. It was constructed over a box culvert pipe.

- * He claimed that he contacted Council at that time, but no formal approval was sought from Council.
- * Owner B claimed that he consulted with a family member of Owner A about this proposed structure at the time, and he thought it was a good idea.
- * In terms of impacts, Owner B acknowledged that the works could have created some sediment impact and flow restriction on the creek in times of heavy rainfall, but that there was also sediment impacts from other parts of the catchment, and that overall it is a solid structure which provides greater accessibility for the various users of Turners Road.

Recommended Action:

A Council Works officer inspected the subject concrete bridge. It generally appeared to be a safe and sound structure. The officer also advised that the unsealed section of Turners Road was created by private property owners a number of years ago, and therefore it is considered that it is not Council's responsibility to maintain it. This section of roadway only services four properties and has always been maintained privately. Whilst it was agreed that the structure could have impacted upon the quality of the intersecting waterway at the time of construction, it is concluded by the officers that, given the time elapsed since the construction of the structure, any further enforcement action would be a complex and costly exercise. It is therefore recommended that Council take no further compliance action in respect of this issue.



Issue 3: It is alleged that Owner B carried out a major dumping of rubbish and household materials in the main water body running through this valley about 12 to 18 months ago.

- * Owner B denied these allegations, and that he helped to clean out these materials. Conversely, he claimed that Owner A responsible for a major dumping of waste materials at the edge of their property, which has progressively resulted in waste materials appearing in the water body.

Recommended Action:

It is concluded that there is insufficient evidence to take any further compliance action in respect of this complaint.

Issue 4: Owner A alleged that Owner B damaged their fencing during road grading works.

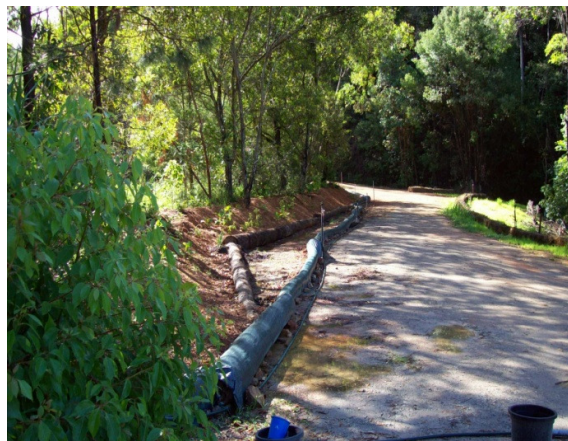
- * Owner B did not have any specific recollection of this matter, as the works were carried out a number of years ago.

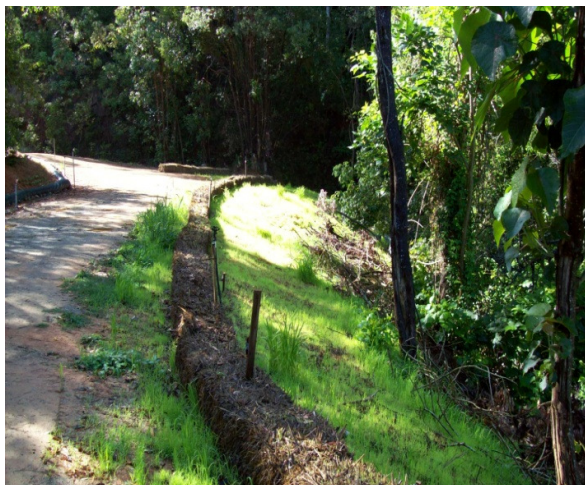
Recommended Action:

There is insufficient evidence for Council to take any further action in respect of this matter.

Issue 5 – Owner A alleged that Owner B had undertaken major unauthorised road works (see photos below) in a right of carriage way between the entrance of Owner B’s property and the adjoining property Lot 110 Turners Road, causing environmental impacts upon the connecting water body system.

- * Owner B identified a small section of unmade Crown Reserve which located at the entrance to Owner B’s property and the adjoining Lot 110 Turners Road. A ROW then leads off from the Crown Reserve to the entrance of Lot 110.
- * Owner B advised that he is currently in the process of purchasing this section of Crown Reserve.
- * Owner B confirmed that road grading and earthworks had been carried out in the ROW primarily by the owner of Lot 110. He claimed that about 75% of the traffic along the ROW and Turners Road relates to the private forestry activity from Lot 110. Council officers witnessed several vehicles entering and leaving Lot 110 in the time of the site inspection. No approval had been sought from Council for these works. Owner B advised that there had been a dispute between him and the adjoining owner about 5-6 years ago relating to the road works.
- * Owner B claimed that these works were undertaken whilst he was overseas, and he was disappointed to find on his return that the work undertaken had resulted in soil being washed into the creek.
- * There was evidence of works being carried out on this section of the ROW, involving both earthworks, road grading and the installation of a new pipe underneath to connect the flow of water from a dam on Owner B’s property through to the broader creek system. No approval had been sought for these works. Council’s Environmental Health officers have recently directed Owner B to provide sediment controls measures such as bunding to address the impacts on the water body. Owner B wants to do further works in this location, but is currently seeking legal advice about the ROW.
- * Owner B also advised that he undertaken the clearance of some noxious weed adjoining the Crown Road/ROW as part of a broader program of works across his entire property, jointly funded by a Federal Government environment fund (\$28,000), and \$85,000 of his own money. It involves the regeneration of former agricultural land, and the creation of regrowth rainforest.
- * Owner B also claimed that he erected fencing in this area to separate his land with the complainant’s land, to prevent cows wandering into his property.





Recommended Action:

Council's Works Unit has previously provided information in respect of these road works:

- Council maintains the first 440 metres of Turners Road to a grid. The road past this grid is considered as an access to the benefitted properties and is not maintained by Council. No plans or applications were submitted to Council for any work undertaken on the subject road, nor has Council inspected the works.
- Any work that has been undertaken which damages adjoining properties is a civil matter between the property owners.
- Council approved a development application for a dwelling in 1997, no other applications for a dwelling or the conduct of a business activity have been lodged since that date.
- Altering a Right of Carriage Way - is a civil matter and is for the parties who benefit from it to investigate further.

Road works on rural zoned properties may, or may not, require development consent, or Part 5 Approval, depending on their scale and impact. It is arguable as to whether any form of Council approval was required for the above works. Following the initial complaint from Owner A, Council's Environmental Health Officers have required an appropriate range of sedimentation protection controls for the better management of these road works. It is concluded that no further compliance action is warranted for this matter.

Issue 6: Unauthorised Building Works on Former Dairy Shed on Owner B's Property

- * Owner B explained that he had demolished most of the former shed and was in the process of redeveloping an Aquaculture Nursery as exempt development. He believed that current planning laws (Exempt and Complying Development SEPP) allowed him to do this as Exempt Development.
- * Council officers pointed out that there were specific Exempt Development provisions in terms of the size of the structure, and the proposed use, given its proximity to the existing dam. Owner B advised that he had consulted with NSW Fisheries in respect of this proposal.



Owner B has since written to Council stating that, "Old Dairy repairs are under 200m2. I am not going to do any aquaculture."

Recommended Action:

No further compliance action necessary at this stage.

Issue 7: Illegal camping on Owner B's site and additional permanent dwellings

- * There was no evidence of any illegal camping on the site. The only form of habitation appeared to be within the existing dwelling house.

Recommended Action:

No further compliance action necessary.

Issue 8: Unauthorised Medical Care (Healing Centre) Use and Signage on Owner B's site and Road

- * Owner B advised that he is part of an international humanitarian group known as "The Template" that seek to assist communities in war-affected countries to restore their basic living standards, such as water supply and hygiene. He claims that the Group have meetings to discuss issues at locations around the world. The Group (up to 30 people at a time) meet on his property at a maximum of 2-3 times a year, often staying for 2-3 days at a time. PC claims that there are no direct commercial services provided or promoted to the public on the site, only a meeting of his Template friends. The signage erected has only been placed to assist with people locating his property. Most of these people camp on the site during their stay.
- * He advised that there is no commercial medical service is provided on site, only care provided by his wife for his friends and relatives.

Owner B has since written to Council stating: "The Template is a gathering of friends. The healing centre business never got started. Template signs are just for friends to be able to find my house. Template is not a commercial business."

Recommended Action:

No further compliance action necessary.

Issue 9 - Unauthorised Construction of Manufactured Homes on Owner B's Site

- * The officers observed that two manufactured homes were currently being constructed.
- * Owner B advised that he is a qualified builder and was building these homes to assist a friend who lives in Queensland. It was his intention to transport the homes to his friend's property when they are complete.
- * He claimed that he gained most of the materials from a Murwillumbah retail supplier.
- * Council officers advised that the activity requires development consent. Owner B commented said that he unaware of such a requirement.
- * The officers also observed that this part of the site had been excavated. Owner B advised that the majority of this excavation had occurred before he purchased the property, and he only undertook minor excavation, and clearance of weeds.



Owner B has since written to Council stating: "Cabins are a one off hobby to help a friend. The cabins are going to help a friend. The cabins are going to leave the property and go to land in Queensland."

Owner B also stated: "South western activity is area of old banana packing shed site, farm maintenance equipment and machinery is stored there."

Recommended Action:

That Council write to Owner B and advise that this use be ceased immediately, or otherwise face more stringent enforcement action

Issue 10 - Alleged storage and repair of an increasing number of vehicles on Owner B's site.

- * There appeared to be no evidence of such activity, with only one van evident, seemingly in need of repair. Other farms and excavation equipment were evident.

Recommended Action:

No further compliance action necessary.

OPTIONS:

1. That Council endorse the recommended compliance action in respect of the unauthorised construction of manufactured homes on the subject site; or
2. That Council instruct Council officers to undertake more detailed investigations of these matters with a view to possible additional compliance or enforcement actions

The Council officers recommend Option 1.

CONCLUSION:

It has been a general practice of Council not to intervene in any disputes between neighbouring owners in respect to the maintenance of unmade roads. Nonetheless, it is evident that the road construction activities could have been better managed. In terms of the various complaints of unauthorised land use, it is recommended that Council endorse that Owner B be instructed to cease the unauthorised construction of manufactured homes on his site immediately, or otherwise face more stringent enforcement action

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Possible legal actions arising out of any Council compliance or enforcement action.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
