

AMENDED CONSENT ISSUED 28/6/2013

IN THE LAND & ENVIRONMENT
COURT OF NEW SOUTH WALES

No. 10264 of 2005

**CONDITIONS OF
CONSENT
DA05/0004**

GALES HOLDINGS PTY LTD
Applicant

As ordered 18 August 2008

TWEED SHIRE COUNCIL
Respondent

GENERAL

1. DELETED

1.1 The development shall be completed in accordance with the Amended Statement of Environmental Effects (November 2007) except where varied by the approved S96AA Applications (DA05/0004.01, DA05/0004.02 and DA05/0004.03) and the approved plans as follows:

- (a) Approximate Haul Road as approved per DA05/0004.03 – Project Number 1177 Plan No P030 Issue K prepared by Knobel Consulting Pty Ltd and dated 3/08/2012,
- (b) Haul Route, Conveyor Route Section and Stockpile Plan as approved by the original DA05/0004 – Project Number 1177 Plan No P031 Issue E prepared by Knobel Consulting Pty Ltd and dated 2/4/08,
- (c) Construction Filling Plan And Sediment Control as approved by DA05/0004.03 - Project Number 1177 Plan No P032 Issue K prepared by Knobel Consulting Pty Ltd and dated 3/08/2012,
- (d) Boxed In Conveyor System as approved by the original DA05/0004 - Project Number 1177 Plan No P042 Issue B prepared by Knobel Consulting Pty Ltd and dated 28/03/2008,
- (e) Schematic Stormwater Drainage Layout for possible future development North & South of Turnock Street as approved by DA05/0004.03 - Project Number 1177 Plan No P153 Issue H prepared by Knobel Consulting Pty Ltd and dated 03/08/2012,
- (f) Schematic Stormwater Drainage Layout for possible future development South & West of Elrond Drive as approved by DA05/0004.03 - Project Number 1177 Plan No P155 Issue D prepared by Knobel Consulting Pty Ltd and dated 03/08/2012,
- (g) Details of Schematic Stormwater Drainage Layout for Possible Future Development South of Turnock Street as approved by DA05/0004.03 - Project Number 1177 Plan No P156 Issue C prepared by Knobel Consulting Pty Ltd and dated 03/08/2012,
- (h) Earthworks and Drainage Layout Plan South and West of Elrond Drive as approved by DA05/0004.03 - Project Number 1177 Plan No P160 Issue C prepared by Knobel Consulting Pty Ltd and dated 06/08/2012,
- (i) Earthworks and Drainage Layout Plan North and of Turnock Street as approved by DA05/0004.03 - Project Number 1177 Plan No P162 Issue D prepared by Knobel Consulting Pty Ltd and dated 06/08/2012,
- (j) Minor Engineering Works to Enhance new Wallum Froglet Habitat Area as approved by DA05/0004.03 - Project Number 1177 Plan No P166 Issue D prepared by Knobel Consulting Pty Ltd and dated 12/12/2012,
- (k) Dropboard Weir and Temporary Levee Detail as approved by DA05/0004.03 - Project Number 1177 Plan No P168 Issue A prepared by Knobel Consulting Pty Ltd and dated 12/12/2012,

except where varied by the conditions of this consent:

Please note: the minor engineering works referenced in plans P166 and P168 are approved by DA05/0004.03 and do not necessitate an application for a Construction Certificate to enable the works shown on those plans to be undertaken.

[GEN0005]

1.2 The Stage 1 Rehabilitation Works within the alternative Wallum Froglet Habitat Area are to be carried out in accordance with the Threatened Species Management Plan for Wallum Froglet Habitat in Kingscliff prepared by Michael Mahoney, Anne Clements and Associates and Stephen N Webb and Associates dated April 2013.

1.3 Within 60 days of commencing of work for the Stage 1 Rehabilitation Works , a restriction on user burdening that part of Lot 26D DP10715 that is retained for the benefit of the Wallum Froglet (the alternative Wallum Froglet Habitat Area) shall be registered in favour of Tweed Shire Council. The instrument shall be in or to the effect of the fourth Restrictive Covenant annexed to these conditions and will affect the area of land referred to in the annexed fourth Restrictive Covenant.

1A. DELETED

1.4 Within 2 years of the date of commencement of DA05/0004, a restriction on user burdening lots 1, 2 and 3 DP 781714 for the land shown on the plan marked "Littoral Rainforest vegetation" as "covenant area" shall be registered in favour of Tweed Shire Council. The restriction shall prevent the removal of littoral rainforest vegetation from that land. The instrument shall be in or to the effect of the third Restrictive Covenant annexed to these conditions and will affect the area of land referred to in that Restrictive covenant.

[GENNS01]

1B. DELETED

1.5 Within 2 years of the date of commencement of DA05/0004 a restriction on user and public positive covenant burdening part of Lot 13 DP 871753 for the land shown on the Plan marked "Level Survey of Part of Land adjacent to Turnock Street, dated 7 April 2008 shall be registered in favour of Tweed Shire Council. The instrument shall be in or to the effect of the first Restrictive Covenant annexed to these conditions and will affect the area of land referred to in that Restrictive covenant.

[GENNS01]

1C. DELETED

1.6 Within 2 years of the date of commencement of DA05/0004 a restriction on user burdening those parts of lot 11 and Lot 12 in DP871753 that are retained for the benefit of the Wallum Froglet (land to the south of Turnock Street) shall be registered in favour of Tweed Shire Council. The instrument shall be in or to the effect of the second Restrictive Covenant annexed to these conditions and will affect the area of land referred to in the annexed second Restrictive Covenant.

[GENNS01]

1CA. DELETED

1D. DELETED

1.7 Within 2 years of the date of commencement of DA05/0004 the applicant shall submit to the Council a management plan for the area which is the subject of the first restrictive covenant. The management plan shall contain provisions with respect to:

- a. habitat description: baseline survey of current condition and extent of habitat;
- b. MRS survey: baseline survey of snail population;
- c. review and assessment of threatening processes(including weeds, predators, storm water and wetting up);
- d. initial habitat protection and restoration works (weeding and fencing);
- e. monitoring: habitat monitoring by photos and annual survey of fixed grid sample points (annual for five years), snail monitoring by day and night survey of fixed sample points (annual for five years), and
- f. reporting: preparation by an appropriately qualified, independent expert of annual monitoring report and recommendations for management action which shall be submitted to Council. Should management actions be recommended in the report the Applicant will take reasonable steps to address the recommended management actions.

The management plan, with the goal of ensuring that the local population of the Mitchell Rainforest Snail is not likely to be placed at risk of extinction, shall be approved by Council within 2 years of commencement of DA05/0004. Once approved the management plan shall be complied with at all times.

After 5 years of monitoring a revised plan shall be submitted to Council for approval which incorporates any necessary and feasible measures for continuing management of the land. Once approved the revised management plan shall be complied with at all times unless varied with the consent of Council.

[GEN0005]

1E. DELETED

1.8 Within 2 years of the date of commencement of DA05/0004 the applicant shall submit to the Council a management plan for the Wallum Froglet Habitat area on Lots 11 and 12 in DP 871753 area which is the subject of the second restrictive covenants. The management plan shall contain provisions with respect to:

- a. habitat description: baseline survey of current condition and extent of habitat;
- b. Wallum Froglet Survey: baseline survey of Froglet population;
- c. review and assessment of threatening processes (including weeds, predators, stormwater, physicochemical and hydrological conditions).
- d. initial habitat protection and restoration works (e.g., if considered appropriate by the expert preparing the management plan, weeding, drainage or fencing);
- e. monitoring: habitat monitoring by photos and annual survey of fixed grid sample points (annual for five years), monitoring by day and night survey of fixed sample points (annual for five years) under suitable weather conditions and during breeding periods. Appropriate methodology, weather conditions and season for monitoring will be described in the management plan, and
- f. reporting: preparation by an appropriately qualified, independent expert of annual monitoring report and recommendations for management action which shall be submitted to Council. Should management actions be recommended in the report the Applicant will take reasonable steps to address the recommended management actions.

The management plan, with the goal of maintaining or improving existing Wallum Froglet habitat, shall be approved by Council within 2 years of commencement of DA05/0004. Once approved the management plan shall be complied with at all times. After approval, the management plan may be varied with the consent of Council.

[GENNS01]

1F. DELETED

1.9 Within 2 years of the date of commencement of DA05/0004 the applicant shall submit to the Council a management plan for the littoral rainforest area within Lots 1, 2 and 3 of DP 781714 which is the subject of the third restrictive covenant. The management plan shall contain provisions in respect of the area coloured green in B&P Surveys Plan 16814 B Rev C as follows:

- a. habitat description: baseline survey of current condition and extent of habitat;
- b. review and assessment of threatening processes(including weeds, and edge effects);
- c. initial habitat protection and restoration works (removal of exotic trees and shrubs and weeding);
- d. monitoring: habitat monitoring by photos and annual survey of fixed grid sample points (annual for five years), and
- e. reporting: preparation by an appropriately qualified, independent expert of annual monitoring report and recommendations for management action which shall be submitted to Council. Should management actions be recommended in the report the Applicant will take reasonable steps to address the recommended management actions.

The management plan shall have provisions to ensure that the balance of the covenant area is not managed or used in a manner which would interfere with the ecological integrity of the littoral rainforest vegetation community in the area coloured green in B&P Surveys Plan 16814 B Rev C.

The management plan, with the goal of ensuring that the ecological integrity of the littoral rainforest vegetation community is maintained or improved over time and furthermore is not likely to be placed at risk of local extinction, shall be approved by Council within 2 years of the date of commencement of DA05/0004. Once approved the management plan shall be complied with at all times.

After 5 years of monitoring a revised plan shall be submitted to Council for approval which incorporates any necessary and feasible measures for continuing management of the land with. Once approved the revised management plan shall be complied with at all times unless varied with the consent of Council.

[GENNS01]

2. (a) Condition 2 of the general conditions of development consent D96/518 shall prior to commencement of filling be modified in accordance with the Environmental Planning & Assessment Act, 1979 to include the subject filling sites as additional land to which the sand can be delivered.
- (b) The approved Environmental Management Plan in relation to D96/0518 is to be modified to the extent, if any, necessary to satisfy the conditions of this consent in relation to the quality of the fill material.

3. DELETED

- 3.1 All works shall comply with the approved Environmental Management Plan (HMC 2012.123EMP (HMC Environmental P/L, December 2012). A copy of the plan complete with Key Person and Contacts shall be provided to tweed Shire Council prior to commencement of works.

[GEN0005]

4. DELETED

- 4.1 All works shall comply with the approved Acid Sulfate Soil Management Plan & Groundwater Management Plan HMC 2012.123ASSMP (HMC Environmental P/L, December 2012).

[GEN0005]

5. DELETED

6. The use of crushing plant machinery, mechanical screening or mechanical blending of materials is subject to separate development application.

[GEN0045]

7. The filling and associated works are to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils adopted Development Design and Construction Specifications except as otherwise provided in this consent.

[GEN0125]

8. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Council be advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.

[GEN0135]

9. DELETED

- 9.1 Prior to commencement of filling work, a Section 68 Certificate, Section 138 and a construction certificate and or engineering plans (as statutorily required) shall be submitted to Council for approval to enable commencement of the filling, drainage and general engineering works as proposed by this consent. This condition is not relevant to the minor engineering works proposed in the new Wallum Froglet Habitat Area which have been approved as part of DA05/0004.03.

[GEN0185]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE AND OR ENGINEERING PLANS AS STATUTORILY REQUIRED

- 10.1 Prior to Issue of a Construction Certificate for the filling works the applicant is to lodge a revised haulage route to minimise tree loss. Such plan is to be consistent with that route defined by Council's Dr. Mark Kingston, the applicants Dr Andrew Smith and the applicants Mr Greg Elks, on 31 March 2008 and such that the alignment is subject to trucks being able to turn on reasonable curves. Only the trees marked on site (with tape) are trees that are to be removed.

In addition the applicant is to lodge details for the rehabilitation of the temporary haul route. This should include details pertaining to the methods for removal, storage and

reinstatement of top soil, disposal of temporary road base material, re-establishment of vegetation and minimising the impacts on the alternative Wallum Froglet Habitat Area as included in the approved "Wallum Froglet Habitat Management Plan, Kingscliff" prepared by Michael Mahoney, Anne Clements and Associates and Stephen N Webb and Associates dated April 2013. This detail shall be approved by Council prior to the issue of a Construction Certificate for filling works.

[PCCNS01]

10.2 A community liaison officer and community liaison contact phone number shall be available on a 24 hour basis during construction works. Details of the contact person and telephone number shall be clearly displayed at the site entry. Details of the contact person and telephone number shall be locally advertised a minimum of fourteen days (14) prior to the commencement of filling works and local affected residents notified by means of an individual letter drop to each household.

A sign is to be erected at the entry of the site to clearly advise the community liaison officers details and contact number. These details are to be documented in the Construction Management Plan.

[PCCNS01]

10.3 A construction management plan is to be provided for the filling and earthworks. These details are to be submitted with the application for a Construction Certificate and or Engineering Plans as statutorily required for the filling and earthworks, identifying how the site and filling works are to be programmed and managed.

The construction management plan shall address, not be limited to, the following matters where relevant:

- Sequencing of filling/earthworks
- Contact details of site manager & community liaison officer
- Traffic and pedestrian management
- Dust Management
- Noise and vibration management
- Construction waste management
- Erosion and sediment control; and
- Flora and fauna management.

[PCCNS01]

10. DELETED

10.4 Section 94 Contributions

Heavy Haulage Component

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate and or Engineering Plans for filling works shall NOT be issued by a Certifying Authority unless the applicable Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

Charges are fixed for a period of 12 months from the date of the original consent and thereafter in accordance with the rates applicable in the current version/edition of the

relevant Section 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 6 prior to the issue of a construction certificate. The contribution shall be based on the following formula:

$$\text{\$Con}_{\text{TRCP - Heavy}} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

$\text{\$Con}_{\text{TRCP - Heavy}}$ heavy haulage contribution

and:

Prod. projected demand for extractive material to be hauled to the site over life of project in tonnes

Dist. average haulage distance of product on Shire roads
(trip one way)

$\text{\$Unit}$ the unit cost attributed to maintaining a road as set out in Section 7.2 (currently 5.4c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.6

Cont
 = Cont (sand)+Cont (Gravel)
 = (580,000*1.44*5.4*0.4*1.05) + (10800*2.4*5.4*0.4*1.05)
 = 1894234 + 58786 cents
 = \$19,500

West Kingscliff - Drainage:

17.3844ha @ \$56,641 \$984,669.80**

S94 Plan No. 7

***Less the value of works in kind as defined below*

In accordance with the Section 94 Contributions Plan No 7 (CP7) the applicant's construction of the works referred to in condition 35(a) to (g) and the grant of the easement referred to in condition 35(h) are "works in kind" that will reduce the amount payable in accordance with CP7. The value of the works for the purpose of calculating the value of "works in kind" will be calculated in accordance with CP7 - Schedule 1 - Contribution Rates, b) Drainage. The value of the easement for the purpose of calculating the value of "works in kind" shall be 75% of the value of land "C" in CP7 - Schedule 1 - Contribution Rates, b) Drainage.

The net (\$984,669.80 less the value of works in kind) CP7 contribution, is to be paid at the earlier of 12 months from the date of the s.68 approval for drainage works required by condition 35 or at the completion of construction of the drainage works referred to in this condition.

If the value of "works in kind" exceed the contribution amount, then this amount shall be a CP7 credit towards future development by the applicant in the Kingscliff Drainage Catchment."

[PCC0225]

11. DELETED

- 11.1 Prior to commencement of filling work a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works (minimum \$1,000).

This bond will be drawn on by Council to undertake any rectification work directed but not completed or progressing to the satisfaction of the Tweed Shire Council's General Manager or delegate, within seventy two (72) hours from the date of serving any notice. The bond is to be released upon completion of all work, to the satisfaction of Tweed Shire Council's General Manager or delegate.

[PCC0275]

12. DELETED

- 12.1 Prior to commencement of filling work (or other work which may generate the need for a long service levy payment) a long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) must be paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

13. DELETED

- 13.1 All imported fill material shall be from the approved sand extraction at Lot 2 DP 216705 in accordance with DA96/0518. If the fill imported to the southern side of Turnock Street has a shell grit content in excess of 1%, then an impermeable barrier shall be placed within the fill batter to the Wallum Froglet Precinct. Any additional fill for topsoil, road base, mulch, etc is to be free of contaminates with details of such fill submitted to Council for approval prior to commencement of work.

[PCC0465]

14. DELETED

- 14.1 The site is to be filled, graded and drained in general accordance with levels and dimensions shown on Filling Plan P162 Issue D prepared by Knobel Consulting Pty Ltd and dated 6/08/2012 except as amended by conditions of consent.

No haulage vehicles are to access the area identified for Wallum Froglet Habitat.

The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for approval by Council.

[PCC0485]

15. DELETED

- 15.1 Prior to the issue of a Construction Certificate and or Engineering Plans for the filling work as statutorily required the following detail in accordance with Councils adopted

Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
- (b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
 - earthworks
 - roadworks/furnishings
 - stormwater drainage
 - landscaping and revegetation works
 - sedimentation and erosion management plans

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

16. DELETED

- 16.1 Waste material (soil, concrete, timber, masonry, steel and the like) generated by the development shall be disposed of in accordance with a Waste Management Plan which shall be submitted to and approved by the Principal Certifying Authority PRIOR to the issue of a construction certificate for the filling work.

The Plan shall specify how the waste is to be treated and/or where the waste is to be disposed of.

[PCC1065]

17. DELETED

- 17.1 An application (or applications) under section 68 of the Local Government Act, 1993 is required prior to commencement of any filling works that involve any of the following:

- connection of a private stormwater drain to a public stormwater drain
- installation of stormwater quality control devices
- erosion and sediment control works

Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

Note: Where Council is requested to issue a construction certificate for civil works associated with this consent, the abovementioned works can be incorporated as part of the cc application, to enable one single approval to be issued. Separate approval under section 68 of the LG Act will then NOT be required.

[PCC1145]

18. The Section 68 Application relating to erosion and sediment control must include a plan prepared in accordance with Section D7.07 of *Development Design Specification D7 – Stormwater*.

- a. The Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development*

Design Specification D7 - Stormwater Quality and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

- b. Specific requirements to be detailed within the Section 68 application include:
- (i) The exit from the haul road and the access into the filling site is to be sealed for a length of 15m prior to connection with public roads and is to include wheel washing facilities located prior to entry and exit onto public roads. These details are to be shown on the application for a construction certificate.

[PCC1155]

19. DELETED

19.1 The Section 68 application shall detail the following provisions in relation to stormwater management & quality

- (a) All stormwater quality control devices to be constructed generally in accordance with Plan 1177 – P032 prepared by Knoble Consulting Pty Ltd Issue K dated 3/08/2012 except as modified by conditions of consent.

[PCCNS01]

20. DELETED

21. DELETED

22. DELETED

23. Where water is to be drawn from Councils reticulated system, the proponent shall:

- Make application for the hire of a Tweed Shire Council metered standpipe including Councils nomination of point of extraction.
- Where a current standpipe approval has been issued application must be made for Councils nomination of a point of extraction specific to the development.
- Payment of relevant fees in accordance with Councils adopted fees and charges.

[PCC1205]

24. Notwithstanding the issue of this development consent, prior to the issue of a construction certificate and or engineering plans as statutorily required , separate consent from Council under Section 138 of the Roads Act 1993, must be obtained for works proposed to take place on a public road including:

- a. The construction of new driveway access (or modification of access);
- b. DELETED;
- c. Temporary access to filling sites;
- d. The erection of the conveyor over Tweed Coast Road; and
- e. Any other works located within Council's road reserve.

The application shall include engineering plans and specifications and include copies of compliance certificates relied upon and details relevant to but not limited to the following:

- Road works/furnishings
- Stormwater drainage

- Sediment and erosion control plans
- Location of all services/conduits
- Traffic control plan(s)
- Detail for each of the proposed access points for transportation of the fill. The Tweed Coast Road access is to be constructed outside of peak traffic periods.
- Construction Access to the land north of Turnock Street will require a left turn lane for the left turn truck movements from Turnock Street. Right turn movements into the filling site to the north are not allowed.

The following specific details are required in relation to the for the boxed in conveyor system proposed across Tweed Coast Road for the transportation of fill from the west to the eastern side of the road:

- Minimum vertical clearance above Tweed Coast Road of 6m.
- Supports are located not closer than 5m from the nearest travel lane.
- Conveyor is to be suitably enclosed to ensure no escape of material onto the road reserve.
- A leasing arrangement is to be entered into with Council for use of the road reserve.
- The conveyor system to be dismantled and removed within 18 months of the commencement of filling works.

Applications for consent under Section 138 must be submitted on Council's standard application form, be accompanied by the required attachments and prescribed fee.

[PCCNS01]

25. DELETED

26. DELETED

26.1 Prior to issue of Construction Certificate and or engineering plans for filling works as statutory required, the Applicant shall lodge structural design details, detailing the design of the acoustic hay fence to satisfaction of Council.

[PCCNS01]

27. DELETED

27.1 Prior to the issue of the construction certificate and or engineering plans for filling works as statutory required a construction noise management plan shall be produced for approval by Council that is generally in accordance with the Environmental Noise Impact Assessment prepared by CRG Acoustic al Consultants dated November 2012, the Noise Guideline for Local Government 2010 and the NSW DECC Interim Construction Noise Guidelines 2009.

[PCCNS01]

28. DELETED

28.1 Prior to the issue of the construction certificate and or engineering plans for the filling works as statutory required a Construction Noise Management Plan must be prepared as part of the CEMP. This is to be lodged with Council for approval and must include:

- a) an education program for Construction personnel about noise minimisation.

- b) identification of each Construction activity, including Ancillary Facilities, and their associated noise sources;
- c) identification of all potentially affected Sensitive Receivers (a sensitive receiver is defined as a resident or occupier of a residential property, where the boundary is subject to noise levels recorded above 58 dB(A) L10 OR a commercial premises that is exposed to noise levels above that specified in Australian Standard AS/NZ 2107:2000 “Acoustics – Recommended reverberation times and sound levels for building interiors” when assessed inside the place of business or 58 dB(A) L10 at an outdoor area associated with operation of the business requiring a level of amenity for normal operation of that business;
- d) the Construction noise objective specified in the Conditions of Approval;
- e) noise and vibration monitoring, reporting and response procedures;
- f) a description of management methods and procedures and specific noise mitigation treatments that will be implemented to control noise and vibration during Construction;
- g) justification for any activities outside the Construction hours specified in the Conditions of Approval. This includes identifying areas where construction noise would not be audible at any Sensitive Receiver;
- h) procedures for notifying residents of Construction activities that are likely to affect their noise amenity; and
- i) contingency plans to be implemented in the event of non-compliance and/or noise complaints consultation procedures to be undertaken with residents.

[PCCNS01]

29. DELETED

29.1 A dilapidation report detailing the current structural condition of the adjoining and adjacent buildings, infrastructure and roads is to be prepared and endorsed by a suitably qualified engineer. The report is to be submitted and approved by Council prior to issue of a construction certificate and or engineering plans for the filling works as statutory required.

A second dilapidation report is to be prepared by a suitably qualified person at the completion of the works to ascertain if any structural damage has occurred to the adjoining and adjacent buildings, infrastructure and roads. The report is to be compared with the first report and recommend a course of action to carry out repairs if required. The report is to be submitted for approval by Council.

[PCCNS02]

30. DELETED

30.1 Within three weeks of fill being placed on the site in each fill stage, the area is to be topsoiled and mulched to the satisfaction to Tweed Shire Council’s engineer. Mulch and topsoil detail are to be shown on the Construction Certificate application and or engineering plans as statutory required. Fertiliser shall not be used on the grassed area proximal to within 20m of the Wallum Froglet Habitat.

[PCCNS02]

31. DELETED

- 31.1 The parts of the site subject to filling are to be adequately fenced with a construction fence, for the works within each relevant stage. The construction fence details are to be shown on the Construction Certificate application.

It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.

[PCCNS02]

32. DELETED

- 32.1 The Construction Certificate application and or engineering plans as statutory required shall detail the following provisions having regard to perimeter & trunk drainage:
- a. Perimeter stormwater drainage shall be designed and constructed along all external boundaries to convey overland runoff from all external catchments to a lawful point of discharge for all storm events up to the ARI 100 year event without causing flooding of adjoining properties or road reserves. All fill batters, perimeter drainage services and associated formations must be contained wholly within the development site, and must not encroach into adjoining properties or road reserves.
 - b. Perimeter cross sections for the entire site are to be provided along the proposed filling perimeter every 20m. The cross sections are to provide existing and proposed finished levels, extending an adequate distance into adjoining land so as to establish external drainage paths.
 - c. DELETED
 - d. A stormwater drainage channel is to be designed and constructed to convey all runoff from Council's existing 750mm pipeline discharging from Turnock Street to the north east corner of the southern fill area to the Kingscliff drain generally along the alignment shown for the SWD documented on Drawing No. P037 issue H prepared by Knobel Consulting Pty Ltd and dated 08/11/07 and Drawing No. P038 issue G prepared by Knobel Consulting Pty Ltd and dated 29/10/07. The last part of the channel may follow a different path to the SWD, being around the fill to discharge to the Kingscliff drain.
 - e. AMENDED - An overland flow path shall be designed and constructed to convey external catchment runoff for the Q100 event from Turnock Street and Lot 100 DP 1071633 through the southern fill area to the Kingscliff Drain in accordance with Drawing Number 1177 – P162 Issue D prepared by Knobel Consulting Pty Ltd and included in Appendix B of the Engineering Report as submitted with the S96AA Reference Number DA05/004.03.
 - f. A stormwater drainage channel is to be designed and constructed to convey all runoff from Council's existing 450 mm SWD currently discharging off Pearl Street through Lot 6, DP21242, to the perimeter catch drain around the fill shown on Knobel Consulting Drawing No. P032, issue J, dated 26/10/07.
 - g. All drainage works required by this condition must be constructed in accordance with detailed design plans submitted to and approved by Council as part of a Local Government Act 1993, s68 Stormwater Drainage works application/approval.

33. DELETED

34. DELETED

34.1 The Construction Certificate application and or engineering plans as statutory required shall detail the following provisions having regard to existing stormwater infrastructure:

- a) Provision shall be made to connect any other existing public stormwater pipes discharging onto the site, through the filled area to a lawful point of discharge, without adverse impact on flooding in the locality.
- b) The drainage works required by this condition must be constructed in accordance with detailed design plans submitted to and approved by Council as part of a Local Government Act 1993, s68 Stormwater Drainage works application/approval.

[PCCNS02]

35. DELETED

35.1 The Construction Certificate and or engineering plans as statutory required shall detail the following provisions having regard to the construction of Kingscliff Drain:

- a) The Kingscliff Drain south of Turnock Street, adjacent to the filling and provisional water quality treatment area, is to be constructed concurrently with filling of the site south of Turnock Street. The drain shall be constructed from the south eastern extent of the provisional water quality treatment works shown on drawing P153 Issue H, dated 3/08/12 to the box culverts under Turnock Street.
- b) Except as varied by this condition, the above drain is to be constructed in general accordance with the trapezoidal channel cross section, and “access maintenance hardstand”, shown on “Main Drain 0-2000 (fig 7.3)” contained in “Appendix B: Supplementary TSC Cross Section Details” contained in “Kingscliff Catchment & Drainage Management Plan” prepared by WBM Oceanics, Revision 3 Dated 24/3/00. No “variable purpose” cross section construction is required beyond the northern limit of the “access maintenance hardstand” on the northern side of the drain. The fill batter shown on Plan P162 Issue D dated 6/08/12 will commence 3.5 m from the top of bank of the drain to allow for the “access maintenance hardstand. The 3.0m wide access maintenance hard stand area along the Kingscliff Drain is to be constructed on the north side of the drain from and connected to Turnock Street. A vehicle turn around area is to be constructed at the other end to permit vehicles using the maintenance access area to turn around. The design of the maintenance access must account for all transverse connections to the Kingscliff Drain, to remain trafficable without impeding runoff or causing flooding on upstream land.
- c) In the section of drain from the box culverts under Turnock Street, east to the start of filling works the cross section on the north side shall be modified to accommodate entry of runoff from the north. The maintenance access may include a series of floodway crossings in this section to enable flow of runoff from the north to cross over the access.
- d) On the south side of the drain, the constructed cross section is to terminate where the revetted bank section intersects natural surface level. No bank or “variable multipurpose” cross section construction is required beyond this point.

- e) The edge treatment and revetment of the drain may be varied to create a more “natural” aesthetically pleasing appearance, providing the hydraulic efficiency and maintainability of the drain is not adversely affected.
 - f) The nominal 1.0m width of the drain invert may be increased to provide a more “natural” aesthetically pleasing appearance.
 - g) The invert of the drain is to be a maximum RL -0.5 AHD from the south-eastern extent of the fill to the invert of the culvert under Turnock Street. It may then taper up to the existing drain outlet invert at St Anthony’s School (lot 2 DP 610174) boundary. Level detail is to be provided for the drain invert.
 - h) Prior to the commencement of filling work a drainage easement is to be created benefiting Council over the main Kingscliff drain from St Anthony’s school to the box culverts under Turnock Street where it traverses lots 11, 12 & 13 DP 871753. The width of the easement shall be from the southern edge of revetment on the south side of the drain to the northern side of the maintenance access on the north side of the drain. Some meandering of the drain about the centreline may be permitted to provide a more “natural” aesthetically pleasing appearance. The easement must allow the bridging of the drain for access and the works referred to in this condition may be removed or altered for the purpose of constructing access ways so long as they are reinstated to a similar standard.
 - i) The drainage works (including the associated works in the drainage easement) required by this condition must be constructed in accordance with detailed design plans submitted to and approved by Council as part of a Local Government Act 1993, s68 Stormwater Drainage works application/approval.
36. The Construction Certificate application and or engineering plans as statutory required shall detail the following provisions having regard to the construction of the haul road;
- a) The plans accompanying a Section 68 stormwater application must ensure there is adequate capacity transverse drainage under/across the haul road to ensure runoff is not impeded or flooding caused on upstream land.
 - b) Where the proposed haul road crosses the Kingscliff Drain, a culvert system with invert level –0.5m generally in accordance with Section 2 of Knobel Consulting Plan P030 (provided it complies with the criteria in (a) above) or other configuration approved by Council shall be provided under the road.
 - c) All culverts constructed over the Kingscliff Drain to facilitate construction of the haul road shall be removed at the completion of filling works.
 - d) The drainage works required by this condition must be constructed in accordance with detailed design plans submitted to and approved by Council as part of a Local Government Act 1993, s68 Stormwater Drainage works application/approval.

[PCCNS02]

37. DELETED

- 37.1 Traffic Management Plans are required prior to the issue of a construction certificate application and or engineering plans for each differing stage of the filling works. The traffic management plans shall be in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2. The plans are to be prepared by an RTA

accredited person shall be submitted to the Principal Certifying Authority. Safe public access shall be provided at all times.

The Traffic Management Plans are to include all temporary signage and road layouts for each stage of the proposed works. The plans are to also provide for pedestrian and cycle movements.

[PCCNS02]

38. The application for a construction certificate and or engineering plans shall detail the conveyor belt over Tweed Coast Road, including the structural design details, the intended colours, a landscaping plan to ensure the stockpile site is screened from the road and to ensure dust is screened to mitigate dust encroaching onto Tweed Coast Road.

[PCCNS02]

39. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like, shall be installed/operated in accordance with those conditions or plans.

[PCW0015]

40. Prior to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:

- a. Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
- b. AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
- c. WorkCover Regulations 2000.

41. Prior to work commencing, a "Notice of Commencement of Work shall be submitted to Council or principal certifying authority at least 2 days prior to work commencing.

[PCW0225]

42. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

43. Filling work in accordance with a development consent must not be commenced until a construction certificate for the civil work has been issued in accordance with Councils adopted Development Design and Construction Specification C101 by Council.
44. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$20 Million for the period of commencement of works until the completion of the defects liability period.

[PCW0835]

45. DELETED

- 45.1 Prior to commencement of work on the site relevant all erosion and sedimentation control measures are to be installed and operational. Prior to the commencement of filling works the wheel wash facility shall be installed to the satisfaction of Council.

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

This sign is to remain in position for the duration of the project.

[PCW0985]

DURING CONSTRUCTION

46. DELETED

- 46.1 The alternative Wallum Froglet Habitat Area is to be managed in accordance with the approved Threatened Species Management Plan for Wallum Froglet Habitat in Kingscliff prepared by Michael Mahoney, Anne Clements and Associates and Stephen N Webb and Associates dated 22 April 2013.

47. During construction, all works required by other conditions or approved management plans (including noise, dust, frog habitat, traffic, storm water, water quality, sediment and erosion control, and the environmental management plan) or the like shall be installed and operated in accordance with those conditions or plans.

[DUR0015]

48. DELETED

- 48.1 During the approved staged rehabilitation of the alternative Wallum Froglet Habitat Area, monitoring is to be conducted in accordance with the approved Wallum Froglet Habitat Management Plan dated 22 April 2013.

49. The Council and/or Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection.

[DUR0415]

50. DELETED

- 50.1 The proponent shall ensure a maximum 580,000m³ of extractive material is imported to the site along the approved haul route from the sources nominated in the development application.

[DUR0735]

51. DELETED

- 51.1 During filling operations:

- All fill and cut batters shall be contained wholly within the subject land.
- All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan, Part A5 – Subdivision Manual and the Design Specification D6 Site Regrading to the satisfaction of the Principal Certifying Authority.
and upon completion,
- All topsoil and mulch is to be respread and the site to be grassed and landscaped including battered areas.

[DUR0755]

52. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".

The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to Council upon completion.

[DUR0795]

53. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.

[DUR0815]

54. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.

[DUR0985]

55. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the release of the bond.

[DUR0995]

56. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. All such materials should be chipped on site (in accordance with the noise management plan) and used in landscaping unless it is not possible due to size, non suitability of the material or some other limitation, in which case the material will be disposed of at Council's Stotts Creek depot.

[DUR1015]

57. All practicable measures in accordance with the management plans must be taken to prevent and minimise harm to the neighbourhood, adjacent development and the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

[DUR1025]

58. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

59. The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act.

[DUR1885]

60. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D, based on the rates contained in Council's current Fees and Charges:

Roadworks

- a. Pre-construction commencement erosion and sedimentation control measures
- b. Completion of earthworks
- c. Permanent erosion and sedimentation control measures
- d. Drainage channels and associated stormwater infrastructure
- e. Final Inspection for bond release

Council's role is limited to the above mandatory inspections and does NOT include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[DUR1895]

61. The contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

62. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

63. Appropriate measures are to be put in place during the construction and/or demolition period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.

[DUR2405]

64. All fuels or chemicals shall be stored within a bunded area and not permitted to discharge or percolate to any watercourse.

[DURNS01]

65. DELETED

66. The site shall not be dewatered without prior approval from the relevant authority and notification to Council.
[DURNS01]
67. All surface water within the fill site shall be directed to the sedimentation ponds, monitored and treated (where necessary), before discharge from the site.
[DURNS01]
68. 'Run on water' to the fill site shall be diverted, where possible, clear of the site.
[DURNS01]
69. A sufficient number of 'on site builder's toilets' shall be provided to manage wastewater from on site employees.
[DURNS01]
70. Vegetation shall not be removed or damaged except as strictly necessary to undertake the proposed works.
[DURNS01]
71. Disturbance of 'monosulfide black ooze' shall be limited approximately to 40m of the main drain where the haul route crosses the drain.
[DURNS01]
72. DELETED
- 72.1 All material stripped and identified as PASS from the site or disturbed below existing ground level shall be placed within a bunded area and neutralised in accordance with the Acid Sulfate Soil Management Plan & Groundwater Management Plan HMC Environmental P/L, December 2012 before reuse or removal from the site.
[DURNS01]
73. All extracted fill materials shall be treated for acid sulfate potential prior to being transported across Chinderah Road.
[DURNS01]
74. Effective sediment and erosion controls shall be placed around all soil stockpiles and the perimeter of the proposed development site, and maintained for the duration of the proposed works to the satisfaction of the General Manager of his delegate.
[DURNS01]
75. Construction must only be carried out between the hours of 7.00 am to 6.00 pm (Monday to Friday), 8.00 am to 1.00 pm (Saturday) and at no time on Sunday and public holidays except:
- a) for the delivery of materials required outside these hours by the Police or other authorities for safety reasons; or
 - b) where it is required in an emergency to avoid the loss of lives, property and/or to prevent environmental harm; or
 - c) where the work is identified in the Construction Noise and Vibration Management Plan and approved as part of the CEMP.
- Local residents must be informed of the timing and duration of work approved under item (c) at least 48 hours before that work commences.
[DURNS01]

76. All works detailed in the Construction Noise Management Plan and associated Noise Impact Assessment for Construction Works be implemented for the period of construction works.
- [DURNS01]
77. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. All plant is to be kept in good operating condition, with regular inspections of the plant to minimise potential to generate noise nuisance.
- [DURNS01]
78. Water trucks are to be available on the site at all times during filling operations. Dust creating activities are to cease when high winds exist and causes nuisance to neighbouring properties.
- [DURNS02]

POST CONSTRUCTION & MANAGEMENT

79. DELETED
- 79.1 The alternative Wallum Froglet Habitat Area is to be managed in accordance with the approved Threatened Species Management Plan for Wallum Froglet Habitat in Kingscliff prepared by Michael Mahoney, Anne Clements and Associates and Stephen N Webb and Associates dated 22 April 2013. Upon any application for subdivision such application is to include provision for transfer of the management.
80. DELETED
- 80.1 Post filling operations the temporary haul road is to be rehabilitated in accordance with Condition 10.1 of this consent.
81. DELETED
82. DELETED

GENERAL TERMS OF APPROVAL UNDER SECTION 200 OF THE FISHERIES MANAGEMENT ACT 1994

83. Filling is only to be undertaken subsequent to an appropriate authorisation from a relevant public authority (other than a local Council) consistent with s200 of the Fisheries Management Act 1994.

GENERAL TERMS OF APPROVAL PERMIT UNDER s 89, 90, & 91 WATER MANAGEMENT ACT 2000

84. DELETED
- 84.1 The applicant is to obtain necessary approvals, if any, in accordance with the Water Management Act 2000 prior to commencement of filling work. Should dewatering be required the Council is to be notified 48 hours prior to commencement of works.

As approved by NSW Land and Environment Court on 18 August 2008 and amended by Tweed Shire Council (DA05/0004.03) on 28 June 2013.

Lindsay McGavin, Manager Development Assessment

TERMS OF FIRST RESTRICTIVE COVENANT REFERRED TO IN ORDERS

The area to which the restrictive covenant relates is that part of Lot 13 DP 871753 bounded on the east by the eastern boundary of that Lot, on the north by the southern bank of the east/west drain, on the west by the eastern bank of the drain running from Quigan Street to the east/west drain and on the south by Quigan Street all as shown on the plan annexed marked A subject to final survey plan.

Restrictive covenant for conservation purposes in respect of the Mitchell's Rainforest_Snail to be created under s. 88E of the Conveyancing Act 1919 for the benefit of the Tweed Shire Council on the terms specified below.

RESTRICTIVE COVENANT FOR CONSERVATION PURPOSES

1. In this instrument, unless the contrary intention appears –

“animals” includes sheep, goats, horses, deer and cattle.

“clearing” and “cleared” in relation to the land, means the ringbarking, cutting, stripping, cutting down, felling, poisoning, lopping, topping, burning, injuring, removal or destruction in any manner whatsoever of vegetation or any part of vegetation growing on the land.

“development” in relation to land, means –

- (a) the erection of a building or structure (other than a fence) on the land; or
- (b) the carrying out of a work in, on over or under the land;

“land” means the land described in the Schedule.

“Management Plan” means a plan for the management of the land (by whatever title it is called) approved under the *Environmental Planning and Assessment Act 1979* or any Act consolidating or replacing that Act, or agreed between the registered proprietor and the Tweed Shire Council, and any amendment or replacement of the plan.

“registered proprietor” means the registered proprietor for the time being of the land recorded in the Register under the *Real Property Act 1900*.

“substance” in relation to the land includes timber, turf, stone, clay, shells, earth, sand and gravel.

“vegetation” in relation to the land means plants indigenous to the State of New South Wales including trees, saplings and seedlings of trees, plants, shrubs, ferns, vines, herbs, grasses and other vegetable cover which are endemic to the land.

2. Without the prior written consent of the Tweed Shire Council –
 - (a) no person shall reside on the land;
 - (b) no animal shall be depastured or driven on the land;
 - (c) no development shall be carried out on the land;
 - (d) the land shall not be cleared, slashed or cultivated;
 - (e) no substance, whether or not in or forming part of the land, shall be interfered with;
 - (f) no fire shall be lit on the land;
 - (g) no use shall be made of the land or activities on the land which would result in the clearing of vegetation on the land; and
 - (h) no use shall be made of the land or activities undertaken on the land which would interfere with or prevent the natural growth or regeneration of vegetation on the land.

3. This covenant does not prevent or restrict in accordance with law:
 - (a) the destruction or removal of vegetation declared to be a noxious weed under the *Noxious Weeds Act 1993* or an Act consolidating or replacing that Act; or
 - (b) the destruction or removal of vegetation which is a prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985* or an Act consolidating or replacing that Act; or
 - (c) the incidental destruction or removal of vegetation lying adjacent to any noxious weeds or prohibited plants where such incidental destruction or removal occurs unavoidably during the process of destroying or removing those noxious weeds or prohibited plants; or

- (d) the destruction or removal of vegetation within 1 metre of the external boundaries of the land for the purpose of erecting or maintaining a fence along those boundaries; or
- (e) the destruction or removal of vegetation within 0.5 metres of the land for the purpose of enabling a survey to be carried out along those boundaries by a surveyor registered under the *Surveyors Act 2001* or any Act consolidating or replacing that Act;
- (f) the destruction or removal of vegetation or substance in compliance with the *Rural Fires Act 1997* or any Act consolidating or replacing that Act; or
- (g) the destruction or removal of vegetation or substance within 3 metres of the top bank of any drain on or adjoining the land for the purpose of maintaining the drain (but excluding the southern bank of the east/west drain for its length from the eastern boundary of Lot 13 to the point marked “x” shown on the annexed Plan marked “A” being B & P Survey Plan 16814B Revision C);
- (h) the removal of refuse, garbage, rubbish or any other noisome, noxious, poisonous or unwholesome matter;
- (i) the taking of reasonable precautions to keep the land free of noxious weeds, rodents or vermin;
- (j) carrying out environmental protection works, being works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works and the like;
- (k) erecting, carrying out or using the land for environmental facilities, being a building or place that provides for the recreational use or scientific study of natural systems, and includes walking tracks, seating, shelters, boardwalks, observation decks, bird hides, or the like, and associated display structures;
- (l) carrying out any other work permitted by the Management Plan.

4.

- (a) The restriction on the use of the land shall be released and revoked to the extent to which it applies to any part of the land in relation to which a

conservation agreement is entered into under Part 4 of Division 7 of the *National Parks and Wildlife Act 1974*.

- (b) The date of release and revocation of restriction on use (whether wholly or in part) shall be the date from which such conservation agreement has effect.
 - (c) The restriction on use may otherwise be released with the consent of the Tweed Shire Council.
5. Any work on the land the subject of this covenant shall be carried out under the guidance of a Mitchell rainforest Snail ecologist in accordance with the recommendations of such ecologist and be consistent with any management plan.
- 5A Nothing in this covenant shall be construed as avoiding the need to obtain any consent under any applicable legislation.
6. The prior written consent of Council is taken to have been given under clause 2 if an approval consent or authorisation of any kind is given for the activity by a public authority having power to do so (or a court or other person or body on appeal or review) under the Environmental Planning and Assessment Act 1979 or any Act replacing it.

TERMS OF SECOND RESTRICTIVE COVENANT REFERRED TO IN ORDERS

The area to which the restrictive covenant relates is those parts of Lots 11 and 12 DP 871753 as shall be defined and detailed in final survey plan approximately as follows:

In relation to Lot 11 the area to the south of Turnock St bounded on the north by Turnock St, on the west by the western boundary of the Lot and on the east by the eastern boundary of the Lot; and

In relation to Lot 12 the area to the south of Turnock St bounded on the north by Turnock St, on the west by the western boundary of the Lot, on the south by the northern edge of the drainage easement created under Condition 35(b) in respect of the Kingscliff drain and on the east by the line of the western extent of the fill shown on Knobel Consulting Drawing PO38, Issue G dated 29/10/07; and

Restrictive covenant for conservation purposes in respect of the Wallum Froglet to be created under s. 88E of the Conveyancing Act 1919 for the benefit of the Tweed Shire Council on the terms specified below.

RESTRICTIVE COVENANT FOR CONSERVATION PURPOSES

1. In this instrument, unless the contrary intention appears –
 - “animals” includes sheep, goats, horses, deer and cattle.
 - “clearing” and “cleared” in relation to the land, means the ringbarking, cutting, stripping, cutting down, felling, poisoning, lopping, topping, burning, injuring, removal or destruction in any manner whatsoever of vegetation or any part of vegetation growing on the land.
 - “development” in relation to land, means –
 - (a) the erection of a building or structure (other than a fence) on the land; or
 - (b) the carrying out of a work in, on over or under the land;
 - “land” means the land described in the Schedule.
 - “Management Plan” means a plan for the management of the land (by whatever title it is called) approved under the *Environmental Planning and Assessment Act 1979* or any Act consolidating or replacing that Act, or agreed between the registered proprietor and the Tweed Shire Council, and any amendment or replacement of the plan.
 - “registered proprietor” means the registered proprietor for the time being of the land recorded in the Register under the *Real Property Act 1900*.

“substance” in relation to the land includes timber, turf, stone, clay, shells, earth, sand and gravel.

“vegetation” in relation to the land means plants indigenous to the State of New South Wales including trees, saplings and seedlings of trees, plants, shrubs, ferns, vines, herbs, grasses and other vegetable cover which are endemic to the land.

2. Without the prior written consent of the Tweed Shire Council –
 - (a) no person shall reside on the land;
 - (b) no animal shall be depastured or driven on the land;
 - (c) no development shall be carried out on the land;
 - (d) the land shall not be cleared, slashed or cultivated;
 - (e) no substance, whether or not in or forming part of the land, shall be interfered with;
 - (f) no fire shall be lit on the land;
 - (g) no use shall be made of the land or activities on the land which would result in the clearing of vegetation on the land; and
 - (h) no use shall be made of the land or activities undertaken on the land which would interfere with or prevent the natural growth or regeneration of vegetation on the land.

3. This covenant does not prevent or restrict in accordance with law:
 - (a) the destruction or removal of vegetation declared to be a noxious weed under the *Noxious Weeds Act 1993* or an Act consolidating or replacing that Act; or
 - (b) the destruction or removal of vegetation which is a prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985* or an Act consolidating or replacing that Act; or
 - (c) the incidental destruction or removal of vegetation lying adjacent to any noxious weeds or prohibited plants where such incidental destruction or removal occurs unavoidably during the process of destroying or removing those noxious weeds or prohibited plants; or
 - (d) the destruction or removal of vegetation within 1 metre of the external boundaries of the land for the purpose of erecting or maintaining a fence along those boundaries; or

- (e) the destruction or removal of vegetation within 0.5 metres of the land for the purpose of enabling a survey to be carried out along those boundaries by a surveyor registered under the *Surveyors Act 2001* or any Act consolidating or replacing that Act;
- (f) the destruction or removal of vegetation or substance in compliance with the *Rural Fires Act 1997* or any Act consolidating or replacing that Act; or
- (g) the destruction or removal of vegetation or substance within 3 metres of the top bank of any drain on or adjoining the land for the purpose of maintaining the drain;
- (h) the removal of refuse, garbage, rubbish or any other noisome, noxious, poisonous or unwholesome matter;
- (i) the taking of reasonable precautions to keep the land free of noxious weeds, rodents or vermin;
- (j) carrying out environmental protection works, being works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works and the like;
- (k) erecting, carrying out or using the land for environmental facilities, being a building or place that provides for the recreational use or scientific study of natural systems, and includes walking tracks, seating, shelters, boardwalks, observation decks, bird hides, or the like, and associated display structures;
- (l) carrying out any other work permitted by the Management Plan.

4.

- (a) The restriction on the use of the land shall be released and revoked to the extent to which it applies to any part of the land in relation to which a conservation agreement is entered into under Part 4 of Division 7 of the *National Parks and Wildlife Act 1974*.
- (b) The date of release and revocation of restriction on use (whether wholly or in part) shall be the date from which such conservation agreement has effect.
- (c) The restriction on use may otherwise be released with the consent of the Tweed Shire Council.

7. Any work on the land the subject of this covenant shall be carried out under the guidance of an ecologist with experience and expertise in the habitat of the wallum froglet.
- 7A Nothing in this covenant shall be construed as avoiding the need to obtain any consent under any applicable legislation
8. The prior written consent of Council is taken to have been given under clause 2 if an approval consent or authorisation of any kind is given for the activity by a public authority having power to do so (or a court or other person or body on appeal or review) under the Environmental Planning and Assessment Act 1979 or any Act replacing it.

TERMS OF THIRD RESTRICTIVE COVENANT REFERRED TO IN ORDERS

The area to which the restrictive covenant relates is that part of Lots 1, 2 and 3 DP 781714 shown as covenant area (approx. 4440 m²) on B & P Surveys drawing 16814 B Revision C Sheet 1 annexed hereto which specifies within the covenant area the littoral rainforest area (coloured green).

Restrictive covenant for conservation purposes in respect of Littoral Rainforest to be created under s. 88E of the Conveyancing Act 1919 for the benefit of the Tweed Shire Council on the terms specified below.

RESTRICTIVE COVENANT FOR CONSERVATION PURPOSES

1. In this instrument, unless the contrary intention appears –

“animals” includes sheep, goats, horses, deer and cattle.

“clearing” and “cleared” in relation to the land, means the ringbarking, cutting, stripping, cutting down, felling, poisoning, lopping, topping, burning, injuring, removal or destruction in any manner whatsoever of vegetation or any part of vegetation growing on the land.

“development” in relation to land, means –

- (c) the erection of a building or structure (other than a fence) on the land; or
- (d) the carrying out of a work in, on over or under the land;

“land” means the land described in the Schedule.

“Management Plan” means a plan for the management of the land (by whatever title it is called) approved under the *Environmental Planning and Assessment Act 1979* or any Act consolidating or replacing that Act, or agreed between the registered proprietor and the Tweed Shire Council, and any amendment or replacement of the plan.

“registered proprietor” means the registered proprietor for the time being of the land recorded in the Register under the *Real Property Act 1900*.

“substance” in relation to the land includes timber, turf, stone, clay, shells, earth, sand and gravel.

“vegetation” in relation to the land means plants indigenous to the State of New South Wales including trees, saplings and seedlings of trees, plants, shrubs, ferns, vines, herbs, grasses and other vegetable cover which are endemic to the land.

2. Without the prior written consent of the Tweed Shire Council –

- (a) in respect of the area coloured green on B & P Surveys Drawing 16814B Rev C the land shall not be cleared, slashed, grazed or cultivated;
 - (b) in respect of the area coloured green on B & P Surveys Drawing 16814B Rev C no use shall be made of the land or activities on the land which would result in the clearing of vegetation on the land; and
 - (c) no use shall be made of nor activities undertaken on the land the subject of this covenant which would interfere with the ecological integrity of the littoral rainforest vegetation community in the area coloured green on B&P Surveys Drawing 16814B Rev C.
3. This covenant does not prevent or restrict in accordance with Law:
- (a) the destruction or removal of vegetation declared to be a noxious weed under the *Noxious Weeds Act 1993* or an Act consolidating or replacing that Act; or
 - (b) the destruction or removal of vegetation which is a prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985* or an Act consolidating or replacing that Act; or
 - (c) the incidental destruction or removal of vegetation lying adjacent to any noxious weeds or prohibited plants where such incidental destruction or removal occurs unavoidably during the process of destroying or removing those noxious weeds or prohibited plants; or
 - (d) the destruction or removal of vegetation within 1 metre of the external boundaries of the land for the purpose of erecting or maintaining a fence along those boundaries; or
 - (e) the destruction or removal of vegetation within 0.5 metres of the land for the purpose of enabling a survey to be carried out along those boundaries by a surveyor registered under the *Surveyors Act 2001* or any Act consolidating or replacing that Act;
 - (f) the destruction or removal of vegetation or substance in compliance with the *Rural Fires Act 1997* or any Act consolidating or replacing that Act; or
 - (g) the destruction or removal of vegetation or substance within 3 metres of the top bank of any drain on or adjoining the land for the purpose of maintaining the drain;

- (h) the removal of refuse, garbage, rubbish or any other noisome, noxious, poisonous or unwholesome matter;
- (i) the taking of reasonable precautions to keep the land free of noxious weeds, rodents or vermin;
- (j) carrying out environmental protection works, being works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works and the like;
- (k) erecting, carrying out or using the land for environmental facilities, being a building or place that provides for the recreational use or scientific study of natural systems, and includes walking tracks, seating, shelters, boardwalks, observation decks, bird hides, or the like, and associated display structures;
- (l) carrying out any other work permitted by the Management Plan.
- (m) landscaping and management (including mowing and weeding) outside the littoral rainforest area coloured green on B & P Survey drawing 16814B Revision C (“The littoral rainforest area”) and which does not interfere with the ecological integrity of the littoral rainforest area.
- (n) the construction outside the littoral rainforest area of services for development the subject of consent or approval on any of the said lots and which does not interfere with the integrity of the littoral rainforest area.
- (o) Carrying out any work which would not interfere with the ecological integrity of the littoral rainforest vegetation community in the area coloured green on B&P Survey Drawing 16814B Rev C.

4.

- (a) The restriction on the use of the land shall be released and revoked to the extent to which it applies to any part of the land in relation to which a conservation agreement is entered into under Part 4 of Division 7 of the *National Parks and Wildlife Act 1974*.
- (b) The date of release and revocation of restriction on use (whether wholly or in part) shall be the date from which such conservation agreement has effect.
- (c) The restriction on use may otherwise be released with the consent of the Tweed Shire Council.

5. Any work on the land the subject of this covenant shall be carried out under the guidance of an ecologist with experience and expertise in littoral rainforest.
- 5A Nothing in this covenant shall be construed as avoiding the need to obtain any consent under any applicable legislation.
6. The prior written consent of Council is taken to have been given under clause 2 if an approval consent or authorisation of any kind is given for the activity by a public authority having power to do so (or a court or other person or body on appeal or review) under the Environmental Planning and Assessment Act 1979 or any Act replacing it.

TERMS OF FOURTH RESTRICTIVE COVENANT REFERRED TO IN ORDERS

The area to which the restrictive covenant relates is Lot 26D in DP 10715 shown indicatively as the Wallum Froglet Habitat Area (WFHA) being west of Elrond Drive as shown on Plan 1177 Drawing Number P166 Issue D as prepared by Knobel Consulting Pty Ltd and dated 12/12/2012. For practical purposes the extent of the Covenant needs to embrace this area and extend to the fenceline in the East and either the fenceline or the top of bank of the drain in the south. The other boundaries are appropriate. The extent is to be detailed on a final survey plan.

Restrictive covenant for conservation purposes in respect of the Wallum Froglet to be created under s. 88E of the Conveyancing Act 1919 for the benefit of the Tweed Shire Council on the terms specified below.

RESTRICTIVE COVENANT FOR CONSERVATION PURPOSES

1. *In this instrument, unless the contrary intention appears –*
 - “animals” includes sheep, goats, horses, deer and cattle.*
 - “clearing” and “cleared” in relation to the land, means the ringbarking, cutting, stripping, cutting down, felling, poisoning, lopping, topping, burning, injuring, removal or destruction in any manner whatsoever of vegetation or any part of vegetation growing on the land.*
 - “development” in relation to land, means –*
 - (a) *the erection of a building or structure (other than a fence) on the land;*
 - or*
 - (b) *the carrying out of a work in, on over or under the land;*
 - “Management Plan” means a plan for the management of the land (by whatever title it is called) approved under the Environmental Planning and Assessment Act 1979 or any Act consolidating or replacing that Act, or agreed between the registered proprietor and the Tweed Shire Council, and any amendment or replacement of the plan.*
 - “registered proprietor” means the registered proprietor for the time being of the land recorded in the Register under the Real Property Act 1900.*
 - “substance” in relation to the land includes timber, turf, stone, clay, shells, earth, sand and gravel.*

“vegetation” in relation to the land means plants indigenous to the State of New South Wales including trees, saplings and seedlings of trees, plants, shrubs, ferns, vines, herbs, grasses and other vegetable cover which are endemic to the land.

2. *In respect of the Wallum Froglet Habitat Area shown on Plan 1177 Drawing Number P166 Issue D as prepared by Knobel Consulting Pty Ltd and dated 12/12/2012;*
 - (i) *Without the prior written consent of the Tweed Shire Council –*
 - (a) *no person shall reside on the land;*
 - (b) *no animal shall be depastured or driven on the land;*
 - (c) *no development shall be carried out on the land;*
 - (d) *the land shall not be cleared, slashed or cultivated;*
 - (e) *no substance, whether or not in or forming part of the land, shall be interfered with;*
 - (f) *no fire shall be lit on the land;*
 - (g) *no use shall be made of the land or activities on the land which would result in the clearing of vegetation on the land; and*
 - (h) *no use shall be made of the land or activities undertaken on the land which would interfere with or prevent the natural growth or regeneration of vegetation on the land.*
 - (ii) *Any work shall be carried out under the guidance of an ecologist with experience and expertise in the habitat of the Wallum Froglet.*
3. *In respect of all areas shown indicatively as Wallum Froglet Habitat Area on the Plan 1177 Drawing Number P166 Issue D as prepared by Knobel Consulting Pty Ltd and dated 12/12/2012 other than those referred to in clause 2 above, such land shall be managed to facilitate the conservation of the wallum froglet in the Wallum Froglet Habitat Area.*
4. *This covenant does not prevent or restrict in accordance with Law:*
 - (a) *the destruction or removal of vegetation declared to be a noxious weed under the Noxious Weeds Act 1993 or an Act consolidating or replacing that Act; or*

- (b) *the destruction or removal of vegetation which is a prohibited plant within the meaning of the Drug Misuse and Trafficking Act 1985 or an Act consolidating or replacing that Act; or*
- (c) *the incidental destruction or removal of vegetation lying adjacent to any noxious weeds or prohibited plants where such incidental destruction or removal occurs unavoidably during the process of destroying or removing those noxious weeds or prohibited plants; or*
- (d) *the destruction or removal of vegetation within 1 metre of the external boundaries of the land for the purpose of erecting or maintaining a fence along those boundaries; or*
- (e) *the destruction or removal of vegetation within 0.5 metres of the land for the purpose of enabling a survey to be carried out along those boundaries by a surveyor registered under the Surveyors Act 2001 or any Act consolidating or replacing that Act;*
- (f) *the destruction or removal of vegetation or substance in compliance with the Rural Fires Act 1997 or any Act consolidating or replacing that Act; or*
- (g) *the removal of refuse, garbage, rubbish or any other noisome, noxious, poisonous or unwholesome matter;*
- (h) *the taking of reasonable precautions to keep the land free of noxious weeds, rodents or vermin;*
- (i) *carrying out environmental protection works, being works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works and the like;*
- (j) *DELETED;*
- (k) *carrying out any other work permitted by the Management Plan.*
- (l) *carrying out any other work pursuant to development consent DA05/0004 and maintenance thereof.*

5.

- (a) *The restriction on the use of the land shall be released and revoked to the extent to which it applies to any part of the land in relation to which*

a conservation agreement is entered into under Part 4 of Division 7 of the National Parks and Wildlife Act 1974.

- (b) The date of release and revocation of restriction on use (whether wholly or in part) shall be the date from which such conservation agreement has effect.*
- (c) The restriction on use may otherwise be released with the consent of the Tweed Shire Council.*

5A Nothing in this covenant shall be construed as avoiding the need to obtain any consent under any applicable legislation.

- 6. The prior written consent of Council is taken to have been given under clause 2 if an approval consent or authorisation of any kind is given for the activity by a public authority having power to do so (or a court or other person or body on appeal or review) under the Environmental Planning and Assessment Act 1979 or any Act replacing it.*