

## Late Addendum Report

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### REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

a8 [PR-CM] Development Application DA13/0401.01 for an Amendment to Development Consent DA13/0401 for Integrated Housing Comprising of 12 Dwellings at Lot 35 DP 1145386 & Lot 36 DP 1145386 Cylinders Drive, Kingscliff

**SUBMITTED BY:** Development Assessment and Compliance

**FILE REFERENCE:** DA13/0401 Pt3

Valid



### Civic Leadership

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
  - 1.2 Improve decision making by engaging stakeholders and taking into account community input
  - 1.2.1 Council will be underpinned by good governance and transparency in its decision making process
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#### SUMMARY OF REPORT:

Tweed Shire Council has been served with a Class 1 Appeal for the refusal of Section 96 Modification No. DA13/0401.01.

The modification (DA13/0401.01) was lodged with Council 12 September 2014 and sought approval to amend conditions 86 and 87 which levied Section 64 and Section 94 development contributions which were applied under DA13/0401, which granted consent to integrated housing, comprising 12 dwellings and the Torrens Title subdivision to create 12 lots.

The applicant stated that contributions were levied at the dwelling rates and should have been levied at the lower rate for medium density development, resulting in a reduction of approximately \$140,098.16 in applicable contributions.

On 27 November 2014 Council, under delegated authority refused the application for the following reasons:

1. *The proposed modification is contrary to Councils Section 64 Water and Sewer Development Servicing Plans and Section 94 Developer Contribution Plans.*
2. *The proposed modification is not considered to be in the public interest.*

The Class 1 Appeal is listed for the first callover on 22 June 2015. It is recommended that Council engage solicitors and defend the appeal.

**Late Addendum Report**

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**RECOMMENDATION:**

**That Council defends the Class 1 Appeal (as necessary) for Development Application DA13/0401.01 for an amendment to Development Consent DA13/0401 for integrated housing comprising of 12 dwellings at Lot 35 DP 1145386 & Lot 36 DP 1145386; Cylinders Drive Kingscliff.**

## Late Addendum Report

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### REPORT:

**Applicant:** Mr TW Staines  
**Owner:** Mr Terence W Staines  
**Location:** Lot 35 DP 1145386 & Lot 36 DP 1145386; Cylinders Drive KINGSCLIFF  
**Zoning:** R3 - Medium Density Residential  
**Cost:** NIL

### Background:

Tweed Shire Council has been served with a Class 1 Appeal for the refusal of DA13/0401.01.

DA13/0401 (the original DA) was for integrated housing comprising of a 12 lot subdivision and the construction of a dwelling on each allotment.

The modification (DA13/0401.01) was lodged with Council 12 September 2014 and sought approval to amend conditions 86 and 87 which levied Section 64 and Section 94 development contributions. This was proposed to be achieved by levying Section 64 and Section 94 contributions at the medium density rate, resulting in a reduction of approximately \$140,098.16 in contributions

The S64 and S94 Plans have standard trips and Equivalent Tenements (ET) for Torrens title allotments, which are applied to all Torrens Title subdivisions and were correctly applied under conditions 86 and 87 of development consent DA13/0401.

Advice was provided to the applicant 2 October 2014 advising the following:

*DA13/0401 granted consent to a 12 lot Torrens title subdivision, each with an approved dwelling. Both Water and Infrastructure Engineers advised that the Section 64 and Section 94 Contributions were correctly charged per lot (Torrens title), as per the Contribution Plans. Accordingly, the outcome of discussions held was that the S96 amendment in relation to amending Conditions 86 and 87 which levy S64 and S94 contributions would not be supported.*

*Notwithstanding the above, in relation to credits for the existing Lots 35 and 36 as referenced in your Statement of Environmental Effects/covering letter, dated 22 August 2014 and received by Council 9 September 2014, it is advised that neither of the subject lots are Richtech allotments, as such no credits apply.*

*Given that Council is not in a position to support the S96 application, it is requested that the application be withdrawn. Alternatively, the application will be determined within 14 days from the date of this letter based on the information provided and will not be determined favourably.*

## Late Addendum Report

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A subsequent meeting was held between Council and the applicant Tuesday 28 October 2014, where the abovementioned was discussed and the applicant was again advised that Council would not be in a position to favourably determine the application, given DA13/0401 was approved in accordance with the applicable S64 and S94 Plans. Accordingly, it was recommended to the applicant that the subject application be withdrawn.

After no response was received from the applicant, a further request was made of the applicant (13 November 2014) in relation to the withdrawal of the application. The applicant replied 20 November 2014 advising that the application would not be withdrawn and Council should determine the application. Without a proper response in relation to Councils Section 64 and 94 Plans, the application could not be determined favourably. Accordingly, under delegated authority Council refused the application for the following reasons:

1. *The proposed modification is contrary to Councils Section 64 Water and Sewer Development Servicing Plans and Section 94 Developer Contribution Plans.*
2. *The proposed modification is not considered to be in the public interest.*

The official notice was signed 27 November 2014 and posted 28 November 2014.

The applicant has subsequently lodged a Class 1 Appeal with the NSW Land & Environment Court.

The first call over is scheduled for 22 June 2015. Tweed Shire Council's Solicitors will appear on Council's behalf.

It is recommended that Council resolves to defend the Appeal as necessary.

### **OPTIONS:**

That Council:

1. Defend the appeal and engages Council's solicitors and suitable consultants, if required.
2. Engages Council's solicitors to negotiate consent orders for DA13/0401.01.

Option 1 is recommended.

### **CONCLUSION:**

It is recommended that Council defend the appeal.

**Late Addendum Report**

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**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Council will incur expenses as a result of the Appeal.

**c. Legal:**

Council will need to engage solicitors to defend this Appeal.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**Late Addendum Report**

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