



TWEED
SHIRE COUNCIL

Mayor: Cr K Milne

Councillors: G Bagnall (Deputy Mayor)
C Byrne
B Longland
W Polglase
P Youngblutt

Agenda

Extraordinary Council Meeting Thursday 29 October 2015

held at Murwillumbah Cultural and Civic Centre
commencing at 6.00pm

COUNCIL'S CHARTER

Tweed Shire Council's charter comprises a set of principles that are to guide Council in the carrying out of its functions, in accordance with Section 8 of the Local Government Act, 1993.

Tweed Shire Council has the following charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- to exercise community leadership;
- to exercise its functions in a manner that is consistent with and actively promotes the principles of multiculturalism;
- to promote and to provide and plan for the needs of children;
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
- to have regard to the long term and cumulative effects of its decisions;
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible;
- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government;
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants;
- to keep the local community and the State government (and through it, the wider community) informed about its activities;
- to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected;
- to be a responsible employer.

Items for Consideration of Council:

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REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR CORPORATE SERVICES

1 [CS-EXT] Audit Committee Annual Report for Year Ended 30 June 2015

SUBMITTED BY: Internal Auditor

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

SUMMARY OF REPORT:

The Audit Committee is charged with the responsibility of preparing and presenting an annual report on the Audit Committee activities of the past financial year to Council. Following the review of the Annual Financial Statements by the Audit Committee on Tuesday 27 October 2015 the Audit Committee Annual Report for the period ending 30 June 2015 has been completed.

The Audit Committee Annual Report should be considered in conjunction with the report on 2014/2015 Statutory Financial Reports/Audit Report.

RECOMMENDATION:

That Council receives and notes the Audit Committee Annual Report highlighting its activities for the financial year ended 30 June 2015.

REPORT:

As required under the Audit Committee Charter the Audit Committee has prepared its Annual Report on the past financial year's activities for the period ended 30 June 2015.

The Audit Committee undertook a review of the 2014/2015 Financial Statements on Tuesday 27 October 2015 and following this review, the Audit Committee Annual Report for the period ending 30 June 2015 has been completed. A copy of the Audit Committee Annual Report will be tabled at 29 October 2015 extraordinary Council meeting.

OPTIONS:

1. Receive and note the Audit Committee Annual Report highlighting its activities for the financial year ended 30 June 2015.
2. Do not receive and note the Audit Committee Annual Report highlighting its activities for the financial year ended 30 June 2015.

CONCLUSION:

Council should receive and note the Audit Committee Annual Report highlighting its activities for the financial year ended 30 June 2015 and consider this Annual Report in conjunction with the report on the 2014/2015 Statutory Financial Reports/Audit Report.

COUNCIL IMPLICATIONS:

a. Policy:

Audit Committee Charter v1.6

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

The Audit Committee Annual Report informs the community of Council's Audit Committee activities for the financial year ended 30 June 2015.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Audit Committee Annual Report for Year Ended 30 June 2015:
To be tabled.

2 [CS-EXT] 2014/2015 Statutory Financial Reports/Audit Report

SUBMITTED BY: Financial Services

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
 - 1.2.3 Financial requirements and the community's capacity to pay will be taken into account when meeting the community's desired levels of service
-

SUMMARY OF REPORT:

Council's Statutory General Purpose Financial Reports in accordance with Section 413 of the Local Government Act, 1993 and the Special Purpose Financial Reports in accordance with the Local Government Code of Accounting Practice and Financial Reporting for the financial year ended 30 June 2015 have been completed.

Section 413 (2) – A council's financial reports must include:

- (a) a general purpose financial report;
- (b) any other matter prescribed by the regulations; and
- (c) a statement in the approved form by the council as to its opinion on the general purpose financial report.

This report recommends that the statement as to Council's opinion on the General Purpose Financial Reports as required by Section 413 (2) (c) of the Local Government Act and the Special Purpose Financial Reports as required by the Local Government Code of Accounting Practice and Financial Reporting be executed.

RECOMMENDATION:

That:

1. In accordance with Section 413(1) of the Local Government Act 1993 Council refers the General Purpose Financial and Special Purpose Financial Reports for audit.
2. The statement as to Council's opinion on the General Purpose Financial Reports as required by Section 413(2)(c) of the Local Government Act 1993 and the Special Purpose Financial Reports as required by the Local Government Code of Accounting Practice and Financial Reporting for the financial period 2014/2015, be executed.

REPORT:

Background

Council's Statutory General Purpose Financial Reports in accordance with Section 413 of the Local Government Act 1993 for the financial year ended 30 June 2015 has been completed.

Legislation Requirements

The Local Government Act 1993 ("the Act") relating to the preparation of Council's annual financial reports requires that:

1. Section 413 – A council must prepare financial reports for each year, and must refer them for audit as soon as practicable after the end of that year.
2. Section 413 (2) – A council's financial reports must include:
 - (a) a general purpose financial report;
 - (b) any other matter prescribed by the regulations; and
 - (c) a statement in the approved form by the council as to its opinion on the general purpose financial report.
3. Section 413 (3) – The general purpose financial report must be prepared in accordance with the Act and the regulations and the requirements of:
 - (a) the publications issued by the Australian Accounting Standards Board, as in force for the time being, subject to regulations; and
 - (b) such other standards as may be prescribed by the regulations.
4. Section 416 – A council's financial reports for a year must be prepared and audited within the period of 4 months after the end of that year.
5. Section 418 – Upon receiving the Auditor's Report, the Act requires the Council to give at least 7 days public notice of the meeting at which it proposes to present its audited financial reports, together with the Auditor's Report, to the public.
6. Section 420 – Any person may make a submission to the Council with respect to the Council's audited financial reports or with respect to the Auditor's Report.
7. Clause 215 of the Local Government (General) Regulation, 2005 requires that the Statement under Section 413 (2) (c) on the annual financial report must be made by resolution of the Council and signed by the Mayor, at least one (1) other member of Council, the General Manager and the Responsible Accounting Officer.
8. The *Local Government Code of Accounting Practice and Financial Reporting* requires Council to lodge a complete set of financial statements with the Office of Local Government by no later than the close of business on the 31st October following the financial year end.

Council's Statutory General Purpose Financial Reports and Special Purpose Financial Reports for the financial year ended 30 June 2015 have been completed. It is proposed to present the audited financial reports to the public at the November 2015 Council meeting.

The General Purpose Financial Reports, Special Purpose Financial Reports and Special Schedules for the financial year ended 30 June 2015 are being tabled after endorsement from the Audit Committee at its meeting, 27 October 2015.

OPTIONS:

Not Applicable.

CONCLUSION:

That the statement as to Council's opinion on the General Purpose Financial Reports as required by Section 413 (2) (c) of the Local Government Act and the Special Purpose Financial Reports as required by the Local Government Code of Accounting Practice and Financial Reporting be executed.

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

INFORM. We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1	Statement by Councillors and Management (ECM 3821492).
Attachment 2	General Purpose Financial Statements (ECM3837979).
Attachment 3	Special Purpose Financial Statements (ECM3837980).
Attachment 4	Special Schedules (ECM3837981).

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

3 [PR-EXT] Review of the Building Professionals Act and the Role of Private Certifiers for Subdivisions

SUBMITTED BY: Development Assessment and Compliance

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

SUMMARY OF REPORT:

An independent review of the Building Professionals Act 2005 (BP Act) has been undertaken by Mr Michael Lambert (formerly Secretary of NSW Treasury) to assess the effectiveness of the BP Act in relation to building and subdivision regulation in NSW. The review is necessary as a number of significant problems have been identified with the current building and regulation certification system. It has identified that the incidence of building defects is significant and that these defects are higher in NSW than other states of Australia.

The most significant and wide ranging recommendation of the review relates to allowing **private certifiers to issue subdivision certificates**. Under the current planning system only Council officers with the appropriate delegation can issue subdivision certificates for council approved development consents. These requirements are embodied in the Tweed Shire Local Environmental Plan (LEP) and the Lambert review recommends that the LEP be amended to allow for the private certification of subdivision certificates.

The subdivision certificate is the final step in the land development process and is the last opportunity that Council has to ensure that all conditions of consent have been complied with and that the community is receiving infrastructure that are assets and not liabilities.

Numerous submissions have been forwarded to the Building Professionals Board by local councils and other interested stakeholders expressing concerns about protecting the interests of councils in respect to public assets and the potential conflict of interest of private certifiers. Mr Lambert has responded to these concerns in his response paper dated 5 October 2015. In summary he considers that there are adequate mechanisms in place to ensure private certifiers act in the public interest.

The proposed changes create an environment where the actual owner of the public infrastructure has no ability to reject substandard design or poor quality work. This is an

illogical outcome as the prospective owner of any product or good should have the right to reject substandard or poor quality goods. If the private certifier **accepts** poor quality public infrastructure on behalf of the community, the only option for recourse is litigation which is an expensive and inefficient method for rectifying non-compliant works.

RECOMMENDATION:

That Council:

- 1. Receives and notes this report on the review of the Building Professionals Act and the role of Private Certifiers for Subdivisions; and**
- 2. Writes to the Minister for Planning outlining the concerns raised in this report.**

REPORT:

Introduction

An independent review of the Building Professionals Act 2005 (BP Act) has been undertaken by Mr Michael Lambert (formerly Secretary of NSW Treasury) to assess the effectiveness of the BP Act in relation to building and subdivision regulation in NSW and the associated certification system that is necessary to ensure compliance with the numerous Acts, codes and policies that apply to the construction industry. A copy of this review is attached to this report.(Attachment 1)

The terms of reference for the review were to take into account the scope within which certifiers and the certification system operates. This included the provisions of the Environmental Planning and Assessment Act (EPA Act) both in respect to planning and building controls, the role of local government with development approvals, compliance and record keeping processes and the role of Fair Trading and the Home Building Act in the licensing and oversight of builders and other building trades.

The review is necessary as a number of significant problems have been identified with the current building and regulation certification system. It has identified that the incidence of building defects is significant and that these defects are higher in NSW than other states of Australia.

“Recent incidents in NSW provide some indications that all is not well: the Bankstown apartment block fire with resulting death and injury; the Lane Cove balcony collapse and resulting injuries; and the Macquarie Park failure of a high level balustrade and resulting death. Beyond the human tragedies, building faults inflict a significant economic cost on the community.”

The review is currently in draft form and the author encouraged submissions from interested parties in September 2015, and Council's submission is attached (refer Attachment 2)

Private Certification

The amendment of the EPA Act and introduction of BP Act provided the framework for privately accredited certifiers to undertake roles traditionally performed by Council officers in relation to the approval of Construction Certificates and the issue of Occupation Certificates. The building industry has embraced private certification with a significant proportion of all new buildings currently being regulated and certified by privately accredited certifiers.

The private certification of subdivision work has not experienced the same level of acceptance that has occurred in the building industry. These works include the construction of public infrastructure such as roads, stormwater, sewer reticulation, water supply systems, pump stations and major flood drainage systems. There are several reasons why private sector certification of subdivision works has not been widely adopted. Some of these reasons are listed below:

- Public infrastructure for subdivisions is generally constructed to a higher engineering standard in comparison to private infrastructure and is therefore subjected to stringent quality control procedures not widely adopted in the building industry;

- The monetary value of public infrastructure is generally significantly larger than individual dwellings and therefore the financial liability that the private certifiers must accept is greater for public infrastructure;
- Consulting Engineers and Council Engineers are associated with the delivery of public infrastructure whereas Building Inspectors are responsible for buildings. Consulting Engineers have advised that they are reluctant to accept the liability associated with 'signing off' on public infrastructure. They prefer that Council as the asset owner takes the ultimate liability;
- Most Local Environmental Plans (LEP's) exclude accredited private certifiers from endorsing and issuing Subdivision Certificates. A Subdivision Certificate being the Part 4A certificate that allows for the creation of the new allotments of land and consequently the acceptance of the public infrastructure; and
- The construction of new public water supply and sewer reticulation requires approval under the Water Management Act 2000 and is often regulated by Water Authorities.

What does the Independent review recommend for subdivisions

The review recommends the following changes associated with the certification of subdivisions;

- *Remove the requirement for councils' local environment plan to approve of private subdivision certifiers being able to be appointed as PCAs or issue subdivision certificates and simply allow accredited private certifiers to act as PCAs for subdivisions and issue subdivision certificates*
- *Recognise in the partnership agreement with councils that private subdivision certifiers are fully entitled to issue construction and compliance certificates and councils are not to represent to the contrary*
- *Councils be directed that their only role in respect to a Section 88B, strata or subdivision certification is to confirm the wording of the condition or restriction.*

In addition, it is proposed that:

- *Council subdivision certifiers be required to be accredited with BPB on the same basis as council building certifiers are accredited*
- *NSW work with the ABCB on developing a standard for engineering design requirements for subdivisions.*

Comments in relation to the recommendations for subdivisions

- The most significant and wide ranging recommendation of the review relates to allowing **private certifiers to issue subdivision certificates**. Under the current planning system only Council officers with the appropriate delegation can issue subdivision certificates. The subdivision certificate is the final step in the land development process and is the last opportunity that Council has to ensure that the community is receiving infrastructure that are assets and not liabilities and that all conditions of consent have been complied with. Tweed Shire Council's

Local Environmental Plan prevents private certifiers from issuing subdivision certificate for Council approved development consents. The Lambert review recommends that all LEP's be amended to allow the private certification of subdivisions. At present only one Council, Orange City Council allows for this in its LEP.

- There appears to be a definite city-based perspective when discussing subdivision works due to the lack of reference to the Water Management Act and the fact that many non-metropolitan Councils are their own Water Authority. There is also minimal regard for water & sewer, yet this is a major construction and development activity in country councils.
- There is no mention of works under the Roads Act: There are many instances where improvements to existing roads must be undertaken for a subdivision, as well as connections to existing roads. These works are all regulated under the Roads Act.
- Similarly, there is no mention of works under the Local Government Act – such as works covered by Section 68 for connections to downstream drainage connection points.
- The building certification process is the focus – yet subdivision civil works appear to be ‘thrown in’ as an insignificant ancillary extra. Of the 291 page document, less than 2 pages directly reference ‘Subdivision and Strata Certification’ – yet the recommendations aim to have subdivision civil works included.
- The proposed new ‘Office of Building Regulation’ would create a Standard for engineering design of subdivisions (Section 6.8).
- ‘Loss of life’ is raised as an issue regarding building certification matters, but then the on-going focus quickly shifts to monetary aspects and productivity.
- ‘Competition’ is raised as a big factor in the brief mentions of subdivision works and parity with ‘Fair Trading’ principles
- The Review appears to overlook that Councils are acting on behalf of communities and trying to get the best infrastructure constructed and value for money – not focussed on profits and speed.
- The BPB is intended to remain primarily as is – yet significant changes to and creation of a lot of other legislation is recommended.
- The BP would INCREASE its power – including self-accreditation as well as covering Town Planning matters (Section 7.3).
- ‘Risk assessment’ and insurance matters are other factors causing concern – once again these seem to be more important than quality of work.
- Consequences of civil infrastructure failures have a less occurrence of being life threatening (than building failures), but consequences can be far more wide-reaching and catastrophic: earthworks failures can affect all buildings constructed; costs of road, stormwater etc failures must be borne by the whole community affecting rates and on-going costs to the broader community. Water and sewer failures have far-reaching health implications.

How do Council's currently manage subdivisions?

Councils that are experiencing population growth would also be experiencing land development or subdivision. To manage the subdivision of land and to ensure that the public infrastructure is constructed to an acceptable standard most Councils establish Development Engineering Units who are responsible for the assessment of engineering matters relating to development consents, approval of Construction Certificates (CC), inspections of the works and issuing of the Subdivision Certificates.

A core function of the Development Engineer is to regulate and manage the private consultants who design the public infrastructure and the contractors who build this infrastructure. The quality control systems designed by Council Development Engineers to ensure the delivery of high quality public infrastructure is robust and sophisticated. These quality control systems are specifically tailored to ensure that prior to the acceptance of the public infrastructure it is fit for service and will not become an unacceptable maintenance liability for the rate payers and community at large.

This relationship between private consultants and contractors and Council development engineers has existed for many years. The public infrastructure that is delivered to the community as a result of this relationship is generally of a very high standard and it would seem illogical to change a system that is working well.

What are the risks to Council if the review recommendations are adopted?

Council Development Engineers when checking construction certificates regularly find design errors in drawings prepared by consulting engineers. Some of these are locality/regionally-specific and hence are not easily able to be included in State-wide or nationally adopted construction standards. Examples are: topography specific – such as steep terrain or flood liable lands; or specific localities covered by local DCP's and their associated construction requirements. In addition, the inspection regime managed by the Development Engineers often identifies non-compliant works undertaken by the contractor. Experience has shown that these errors and non-compliant works are an inevitable part of the land development process. They must however be rectified before the infrastructure is finally accepted by Council. Sometimes the rectification process can be an expensive and lengthy process for the developer.

Council Development Engineers have no financial relationship with the developer, consulting engineer or contractor and therefore the potential for conflicts of interest to arise are extremely low. This would not be the case with a private certifier who has a direct contractual arrangement with the developer. This financial relationship between the developer and private certifier could result in the private certifier making decisions that are not in the best interest of the community. For example the private certifier may be persuaded to accept a constructed sewer pump station that does not meet the design and construction specifications or alternatively they may experience pressure to issue a subdivision certificate even though all conditions of consent are not complied with. The most likely scenario however is that the private certifier is simply too busy and consequently mistakes will be made or issues are accidentally overlooked.

If a private certifier issues a subdivision certificate which transfers sub-standard infrastructure to Council the following problems must be overcome by Council;

1. As council has had no involvement in the CC approval, inspections and acceptance of the works it is unlikely that Council would become immediately aware of the non-compliant issues. These issues would arise as accelerated maintenance costs at some future date or infrastructure that deteriorates at a faster rate than expected.
2. If Council does identify non-compliance but the developer elects not to rectify the non-compliance, Council's only recourse would be litigation which is always an expensive procedure.

Under the current system Council Development Engineers are able to ensure that prior to the issue of the Subdivision Certificate all public infrastructure meets the desired standards. Experience has shown that the private sector is often compromised when trying to achieve high quality outcomes because of pressures associated with achieving completion of the works within limited time frames and tight financial budgets.

Response paper by Michael Lambert addressing concerns raised in submissions

Michael Lambert prepared a response paper dated 5 October 2015 aimed at addressing the concerns raised in numerous submissions by local authorities and interested parties. A copy of this paper is attached to this report (Attachment 3).

The issues raised by the submissions are identified below. After consideration of the advice contained within the Lambert response paper the following comments are provided.

Issues Raised in the Submissions

1. Accreditation requirements for private subdivision certifiers

Comment:

Accredited Certifiers should have qualifications in civil engineering and/or land surveying from a recognised tertiary education institution. In addition, the certifier should have extensive experience in the approval, construction and regulatory processes associated with land development and the delivery of public infrastructure and services.

2. Concern about potential conflicts of interest by private certifiers

Comment:

It is acknowledged that numerous mechanisms currently exist to ensure the accountability of private certifiers. On face value these mechanisms should deliver buildings that are designed, constructed and certified to the relevant standards and acceptable industry practice. Unfortunately, experience has shown that this is not the case which is why an independent review of the BP Act is necessary.

There is no doubt that the majority of private certifiers attempt to undertake their duties and responsibilities in a professional manner however given the nature of the building and development industry, certifiers are subjected to unreasonable pressure and influences that at times result in poor quality certification and consequently sub-standard buildings.

There is no substantive evidence to indicate that newly constructed public infrastructure which is constructed by the private sector and approved, regulated and certified by Council officers suffers the same problems experienced by the building sector.

If private certifiers become responsible for the certification and acceptance of public infrastructure on behalf of the asset owner (Council) there are concerns that standards will decline due to the pressure and influence that the private certifiers will be exposed as is the situation in the building industry.

3. Protection of the interests of councils in respect to public assets

Comment:

Councils do have the ability to include conditions of consent in development approvals (DA) requiring the public infrastructure to be designed and constructed to relevant Australian and/or Council standards. This however is only the first step in an infrastructure delivery process that must have numerous checks and balances to ensure that the infrastructure which is finally provided to the community is an asset and not a liability.

These steps being:

- a) Approval of the *Development Application*(DA)
- b) Approval of the *Construction Certificate*(CC)
- c) Inspections and acceptance of the constructed public infrastructure works
- d) Certifications of the works and issue of the *Subdivision Certificate* (SC) which is the normal process for the dedication of the infrastructure to Council

Mr Lambert suggests that Councils have the ability to review the CC at the time of notification and seek to have any issues addressed at this time. Unfortunately there are several concerns associated with this suggestion as noted below:

- The CC has already been approved by the private certifier at this time and the private certifier may be unwilling to amend the approval. Furthermore Council has no statutory powers other than legal action to require the amendment of a construction certificate lawfully issued by a private certifier;
- Council would not receive any income to review the approved CC and it is therefore unlikely that any assessment would be rigorous enough to identify non-compliant matters; and
- Assessment of Construction Certificates for public infrastructure takes time and careful consideration, consequently construction could lawfully commence before the Council completes its review.

The above concerns are well understood because private certifiers already issue construction certificates for public infrastructure and Council's experience has shown that numerous conditions of consent that should have been satisfied prior to the issue of the CC remain outstanding even though the CC has been approved.

The real concern lies with the issue of the *subdivision certificate*. Under the current planning system local Councils are responsible for ensuring that the public infrastructure constructed meets acceptable industry and community standards. The Subdivision Certificate is the final step in the land development process and the last opportunity that Council has to ensure that the community is receiving infrastructure that are assets and not liabilities. The financial burden to the community via increased maintenance budgets or inefficient infrastructure performance could be significant given the capital costs associated with infrastructure.

Council Development Engineers who assess CC's, inspect the works and certify the subdivision certificate, are very much aware that the quality control system currently in place is responsible for identifying numerous non-compliant matters during the infrastructure delivery process. Furthermore, the integrity of the system is reliant on the independent checks and balances that currently exist. To remove councils ability (as the owner of the infrastructure) to reject substandard infrastructure is not in the best interest of the community.

4. Lack of mandatory inspections for subdivision developments

Comment:

Mandatory inspections for subdivision work have been common practice in the Tweed Shire for at least 25 years. Most other council's in NSW have a mandatory inspection regime as well. Tweed Shire Council's *Design and Construction Specifications* clearly identify the inspections that must be undertaken during the construction process. These inspections are shown in table D2:

TABLE D2 - SCHEDULED INSPECTIONS				
Hold point	Description	When	Acceptance criteria	Comments
1.	Inspection of sedimentation and erosion control measures.	Prior to stripping of vegetation or and/or topsoil from the site.	Erosion and sediment control measures are installed in accordance with the approved erosion and sediment control plan.	
2.	Inspection of site.	After stripping of topsoil, prior to earthworks. Not a required hold point if a geotechnical consultant has been engaged in accordance with AS 3798-1996 and a certificate verifying this has been submitted to Council.	In situ material is deemed to be suitable for earthworks.	If in situ material not deemed suitable, the subdivider must submit alternative proposal to remove unsuitable material and import satisfactory replacement material.

TABLE D2 - SCHEDULED INSPECTIONS				
Hold point	Description	When	Acceptance criteria	Comments
3.	Inspection of completed earthworks.	When earthworks completed and prior to placement of pavement materials.	Finished earthworks and sub grade levels are in accordance with approved design plans, Sediment and erosion control measures (including dust control) are installed and operating in accordance with the approved erosion and sediment control plan.	
4.	Inspection of gravity sewer	Prior to backfilling and includes but not limited to bedding, pipe class, house connections, junctions and trench support	To be in accordance with Design and Construction specifications and approved Construction Certificate	
5.	Inspection of sewer rising mains	Prior to backfilling and includes but not limited to bedding, pipe class, valves and markers	To be in accordance with Design and Construction specifications and approved Construction Certificate	
6.	Water reticulation	Prior to backfilling and includes but not limited to bedding, pipe class, thrust blocks, water services, stop valves, hydrants and air valves	To be in accordance with Design and Construction specifications and approved Construction Certificate	
7.	Stormwater	Prior to backfilling and includes but not limited to bedding, pipe class, jointing, manholes, gullies, IAD and lifting bungs	To be in accordance with Design and Construction specifications and approved Construction Certificate	
8	Road sub grade levels and proof rolling.	Sub grade completed, prior to placement of pavement.	Levels within specified tolerance. Proof rolling with truck dual wheels with minimum axel weight of 8 tonnes) does not reveal visible deflection.	Areas deflecting are to be removed and replaced with compacted approved material for full extent of affected area and subjected to retest.

TABLE D2 - SCHEDULED INSPECTIONS				
Hold point	Description	When	Acceptance criteria	Comments
9.	Road sub base levels and proof rolling.	Sub base completed, prior to placement of pavement.	As above.	As above.
10.	Pavement under kerb & gutter.	Immediately prior to pouring kerb and gutter and stringline for kerb machine is in place.	As above.	As above.
11.	Finished road Pavement.	Pavement completed, trimmed and compacted (prior to sealing).	Levels within specified tolerance and with sufficient depth still available to accommodate AC (if applicable). Proof rolling with truck dual wheels with minimum axel weight of 8 tonnes) does not reveal visible deflection.	As above.
12.	Concrete structures including footpaths.	After placement of steel reinforcing and formwork and prior to concrete pour.	Formwork structurally sound and dimensionally correct. Reinforcing in accordance with approved drawings.	
13.	Kerb and gutter where grades are less than 1%.	Kerb & gutter completed.	Water from water truck is to be run down kerb and reveal no ponding.	
14.	Stormwater pollution control structures.	Unit installed and fitted out.	Unit constructed and installed in accordance with approved plans and specifications.	
15.	Sewerage pumping and stations civil works.	Prior to pouring concrete.	Excavation, formwork and reinforcing is in accordance with approved plans and specifications.	
16.	Sewerage pumping and lift stations mechanical and electrical.	Mechanical and electrical works installed.	Mechanical and electrical works installed in accordance with approved plans and specifications.	

TABLE D2 - SCHEDULED INSPECTIONS				
Hold point	Description	When	Acceptance criteria	Comments
17.	Sewerage pumping and lift stations commissioning.	Pumping station completed.	Pumping station performs in accordance with approved plans and specifications. All necessary operation and parts manuals handed to infrastructure authority.	
18.	Sewer and water reticulation testing	Prior to final practical inspection and includes but not limited to gravity sewer, sewer rising mains, manholes and water reticulation	To be in accordance with Design and Construction specifications	
19	Final practical inspection.	Subdivision works completed.	No defects or non-compliance found.	
20.	Off defects liability inspection.	Expiry of defects liability period.	Satisfactory outcome of inspections	

The inspection regime undertaken by Council for subdivisions is considered to be satisfactory.

5. Road Safety

No comment.

6. Council officer certification

Comment:

Councils would need to provide financial support to assist its officers to achieve and maintain accreditation.

Other issues raised

7. Accreditation of subdivision certifiers

Comment:

This suggestion has merit however consultation with the private consulting sector would be required.

8. Accreditation or pre-qualification of subdivision subcontractors

Comment:

This suggestion has merit however consultation with the private construction sector would be required.

OPTIONS:

1. Council receives and notes this report; and
2. Council writes to the Minister for Planning outlining the concerns raised in this report

Council officers recommend options 1 and 2

CONCLUSION:

The draft recommendations contained in the independent review of the Building Professionals Act 2005 (BP Act) proposes significant adverse changes to a public infrastructure delivery system that has been working efficiently for many years. In addition, the review does not address the interrelationship that exists between the Local Government Act, Roads Act, Water Management Act and the Environmental Planning and Assessment Act and how those various Acts impact on the provision of new public infrastructure.

The independent review has a strong bias towards the many problems associated with private certification within the building industry and makes various recommendations to rectify these problems. Unfortunately the review attempts to apply these recommendations for the private certification of public infrastructure created in new subdivisions.

The proposed changes create an environment where the actual owner of the public infrastructure has no ability to reject substandard design or poor quality work. This is an illogical outcome as the prospective owner of any product or good should have the right to reject substandard or poor quality goods. If the private certifier **accepts** poor quality public infrastructure on behalf of the community, the only option for recourse is litigation which is an expensive and inefficient method for rectifying non-compliant works.

The private sector is very efficient at designing and constructing infrastructure. The public sector (Development Engineers) has the necessary skills to independently and ethically manage quality control systems and regulate the approval and construction of this infrastructure. The combined resources of the private and public sector has been delivering quality public infrastructure to the community for many years that is fit for purpose and will not place an unacceptable financial burden on the community.

Consequently the recommendation of the independent review of the Building Professionals Act to amended Local Environmental Plans to allow for the private certification of subdivisions should be rejected as it is not in the interest of the community.

COUNCIL IMPLICATIONS:

a. Policy:

If the Independent Review recommendations are adopted amendments to the Tweed Local Environmental Plan will be necessary.

b. Budget/Long Term Financial Plan:

It is likely that council will be exposed to additional maintenance liabilities resulting in long term financial impacts and;

Infrastructure replacement programs may increase due to accelerated deterioration of public infrastructure.

c. Legal:

Statutory changes to building and planning legislation. Increased litigation due to Council attempting to seek compensation for substandard public infrastructure created in new subdivisions.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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|---------------|---|
| Attachment 1. | Independent Review of the Building Professional Act 2005 (ECM 3834419) |
| Attachment 2. | Tweed Shire Council submission dated 29 September 2015 (ECM 3834421) |
| Attachment 3. | Response to paper by M Lambert dated 5 October 2015 (ECM 3834420) |
| Attachment 4. | Local Government Engineers' Association of NSW submission (ECM 3834422) |
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