

# NOTICE OF MEETING

Notice is hereby given that a meeting of



## DEVELOPMENT CONTROL UNIT

**Will be held at the Administration Centre, 4 Breese Parade, Forster**

**16 AUGUST 2017 AT 2PM**

The order of the business will be as detailed below (subject to variation by Council)

1. Declaration of Pecuniary or Conflicts of Interest (nature of Interest to be Disclosed)
2. Apologies
3. Confirmation of Minutes
4. Matters Arising from Minutes
5. Address from the Public Gallery
6. Matters for Information
7. Close of Meeting

A handwritten signature in black ink that reads "Glenn Handford". The signature is written in a cursive style.

**Glenn Handford**  
**GENERAL MANAGER**

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## **CONSIDERATION OF OFFICERS' REPORTS:**

### **DIRECTOR PLANNING & NATURAL SYSTEMS**

#### **1 DA-548-2017 TWO STOREY DWELLING & ATTACHED CARPORT - TARBUCK BAY**

**Report Author** David Underwood, District Building Surveyor

**File No. / ECM Index** DA-548/2017 & PK 16686

**Date of Meeting** 16 August 2017

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#### **DETAILS**

Date Received: 6 June 2017

Applicant: Mr Ian Sercombe

Owner: Mr and Mrs M C Dixon

Land: Lot 67 DP 249056, 16 Crown Close, Tarbuck Bay

Property Key: 16686

Zoning: RU5 Village under GLLEP 2014

#### **SUMMARY OF REPORT**

- Application submitted for a two (2) storey dwelling with attached carport.
- Proposal does not comply with the height limitations of GLLEP 2014.
- The proposed carport is in non-compliance with the setback requirements of Council's DCP.
- Non-compliances with the height limitation and setbacks discussed.

#### **SUMMARY OF RECOMMENDATION**

The proposed development application be approved subject to conditions of consent.

#### **FINANCIAL/RESOURCE IMPLICATIONS**

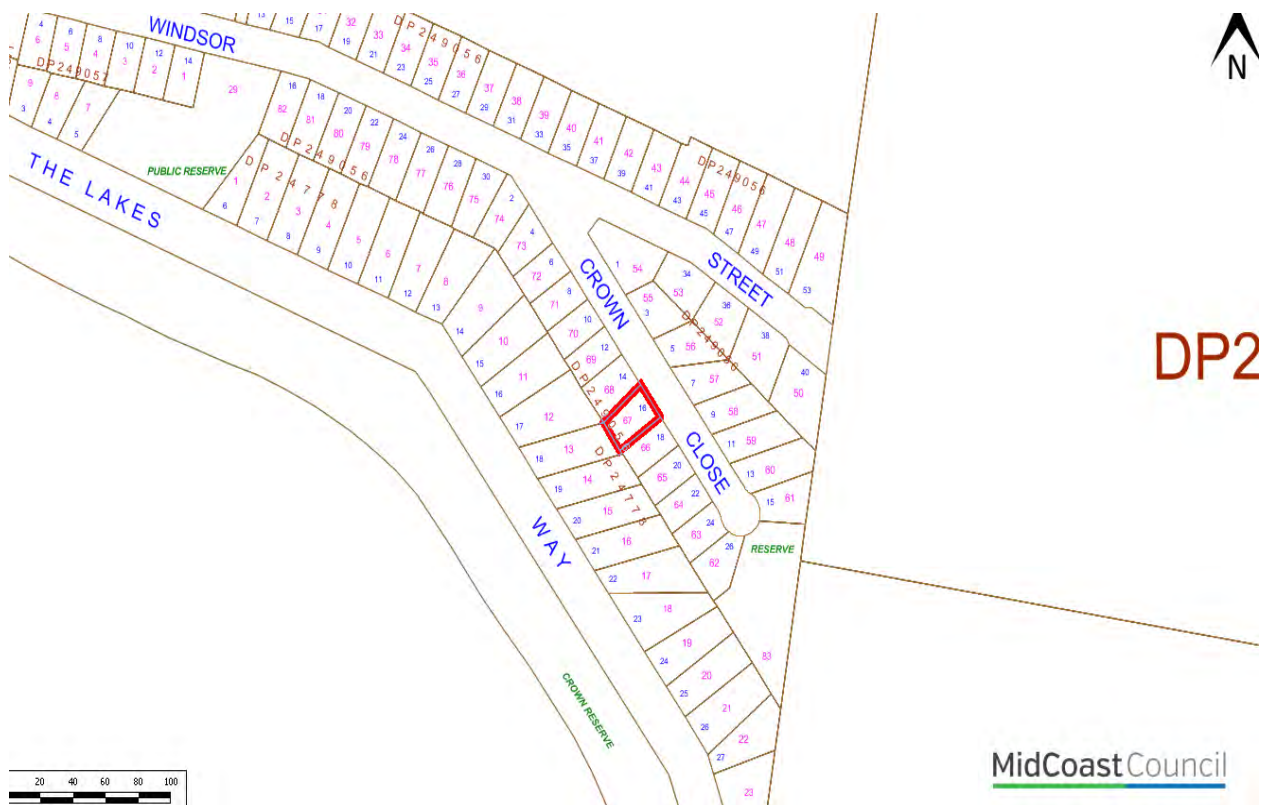
Cost of defending any appeal against Council's decision.

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court with inherent cost implications.

#### **LEGAL IMPLICATIONS**

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court requiring legal representation.

## SUBJECT SITE AND LOCALITY



## BACKGROUND

- |             |   |
|-------------|---|
| 6 June 2017 | Development Application received for a two (2) storey dwelling, which included a written request for variation of the LEP requirements. |
| 9 June 2017 | Development Application neighbour notified and referred to the NSW Rural Fire Service.  |
| 3 July 2017 | NSW Rural Fire Service provided recommendations for the proposed dwelling.  |

## SITE DESCRIPTION

The subject site is located on the south-western side of Crown Close, Tarbuck Bay. There are established Eucalypt trees on the allotment, some of which will need to be removed. The site falls steeply from front to back with a steeper embankment being located toward the front of the lot.

## PROPOSAL

The proposal is for a two (2) storey dwelling with an attached carport to be located on a steeply sloping site. The design of the proposal has taken into account the steep site constraints which have resulted in the elevated carport structure being located directly behind the front property boundary. The dwelling and carport will consist of light-weight timber framed construction with external cladding and a metal roof (refer to Annexure B).

## REPORT

The following matters listed under Section 79C of the Environmental Planning and Assessment Act, 1979, are relevant in considering this application:

- a) ***The provisions of any environmental planning instrument; any proposed instrument that is or has been the subject of public consultation and which have been notified to the consent authority; any DCP; any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F; any matters prescribed by the regulations; any coastal zone management plan that apply to the development application on the subject land.***

### **Great Lakes Local Environmental Plan 2014 (GLLEP 2014)**

Under GLLEP 2014 the development site is zoned RU5 Village. Mapping indicates that there is a 0.4:1 Floor Space Ratio (FSR) requirement and a maximum height of dwellings of 8.5 metres. The objectives of the RU5 zone are:

- To provide for a range of land uses, services and facilities that are associated with a rural village.
- To provide for a range of land uses, services and facilities that are associated with a coastal village.
- To enable non-residential development that does not prejudice the established land use pattern within the village.

Dwellings are permitted with consent on the land. The proposed dwelling is not expected to conflict with objectives of the village zone, which applies to the locality. The proposed dwelling will result in compliance with the Floor Space Ratio requirements with a total FSR of 0.25:1. However; the dwelling does exceed the height limitation of 8.5 metres as the proposed height of the dwelling is up to 8.87 metres above the existing ground level. Clause 4.6 of the LEP allows for flexibility in applying certain development standards to development applications. The relevant sections of Clause 4.6 have been listed and discussed below.

### **Clause 4.6 Exceptions to development standards**

1. The objectives of this clause are as follows:
  - a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
  - b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

**Comment:** Given the minor nature of the variation, (370mm variation to height limit) on the eave located on the north western side of the dwelling and due to the steep nature of the site it is considered that flexibility in this instance is reasonable.

2. Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

**Comment:** The maximum height of a building is not a development standard that is excluded from the operation of this clause.

3. Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - b) that there are sufficient environmental planning grounds to justify contravening the development standard.

**Comment:** The applicant has made a written request under 4.6 of the LEP to consider the variation to the height limitation. The objectives of Clause 4.3 Height of Buildings are as follows:

- i) to ensure that the scale of proposed buildings is compatible with the existing environmental character and the desired future urban character of the locality,
- ii) to encourage residential development that is consistent with AS 4299–1995, Adaptable Housing.

The applicant has detailed the following issues as justification for the non-compliance:

- *This clause 4.6 variation request is in relation to the height limit requirement from the Great Lakes Environmental Plan & the DCP 2014. The site has a height limit of 8.5 metres. A minimal portion of the proposal exceeds the 8.5 metre height limit. The dwelling has a maximum height of 8.87 metres which is 370mm above the 8.5 metre height limit.*
- *Due to the minor area of non-compliance and the very steep nature of the site we request an exception to the height limit.*
- *The proposal has been designed to ensure that the dwelling is compatible with the height, bulk and scale of the existing and desired future character of the surrounding area.*
- *The proposed house has been designed to minimise overshadowing, loss of privacy and loss of views to neighbours.*

The proposal has been considered against Section 79C of the Environmental Planning and Assessment Act and it is considered that there are sufficient planning grounds to justify contravention of the development standard.

A copy of the submission from the applicant is contained on the DA file.

4. Development consent must not be granted for development that contravenes a development standard unless:
- a) the consent authority is satisfied that:
    - i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - b) the concurrence of the Director-General has been obtained.

**Comment:** It is considered that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).



The proposed development will be in the public interest as it is consistent with the objectives of the height development standard and the objectives of the RU5 zone.

The Director General's office has previously advised Council that concurrence may be assumed as detailed in Planning Circular PS 08-003. A copy of the letter advising this and a copy of the circular is on file for the viewing of the Development Control Unit (DCU).

5. In deciding whether to grant concurrence, the Director-General must consider:
  - a) whether contravention of the development standard raises any matter of significance for state or regional environmental planning, and
  - b) the public benefit of maintaining the development standard, and
  - c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

**Comment:** The Director General's office has previously advised Council that concurrence may be assumed as detailed in Planning Circular PS 08-003. A copy of the letter advising this and a copy of the circular is on file for the viewing of the Development Control Unit (DCU).

6. Not relevant to application.
7. After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
8. Not relevant to application.

### ***State Environmental Planning Policy***

State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71) applies to all land within the coastal zone as defined in the Coastal Protection Act 1979 and accordingly applies to the subject site to the extent of requiring Council to consider the matters listed in Clause 8 of the Policy. In this regard, the proposal is considered acceptable in relation to the scenic qualities of the coast, given that the height of the dwelling is consistent with others in the locality.

### ***Great Lakes Development Control Plan***

#### **5.4 General Building Design**

##### **Objectives**

- To provide a high quality design of new residential development that responds to the environment in which it is located.

##### **Controls**

1. Garages and carports must have a minimum 500mm setback from the front building line of the dwelling for which it is provided.
2. Garages and carports and open car parking spaces must be setback at least 6 metres from the front property boundary.

##### **Comment:**

The proposed carport is not setback 500mm from front face of dwelling. Given the steep topography of the locality other precedents have been set where elevated parking decks, with carport structures above, have been approved directly behind the front property boundary. This variation reduces the impacts of excessive filling required to achieve compliant setbacks and driveway grades.

## **Setbacks**

### **5.5.1 Objectives**

- To ensure residential buildings have sufficient separation to provide privacy, solar access, landscaping opportunities and amenity for occupants.

### **5.5.2.1 Front Setback Controls**

1. A residential building must be setback from its primary road frontage a sufficient distance to ensure safe access and egress from the lot and amenity to residents of the site.
2. Where there are existing neighbouring houses within 40 metres, the front setback should be an average of the front setbacks of the nearest two neighbouring houses, with the same primary road frontage.
3. Garages, carports and open car parking spaces must be setback at least 6 metres from the front property boundary.

#### *Additional Front Setback Controls Excluding Site Specific Controls*

1. Where there are no neighbouring houses the minimum setback from the primary road frontage will vary:
  - a) 4.5 metres minimum setbacks on allotments less than 900m<sup>2</sup>; and
  - b) 6 metres minimum setbacks on allotments greater than 900m<sup>2</sup>.

#### **Comment:**

The proposed setback of 6.055 metres minimum to the front of the dwelling is considered consistent with the existing streetscape. The issue of the zero setback to the carport is supported as a variation given the steep nature of the site and other precedents in the area.

#### ***b) The likely impacts of development including environmental impacts on both natural and built environments and social/economic impacts in the locality***

#### ***Context and Setting***

It is considered that the proposed two (2) storey dwelling and carport results in a development which is consistent with the surrounding locality.

#### ***Site Design and Internal Layout***

The design of the development has taken into account the steep site constraints. Many similar two (2) storey dwellings exist in the Tarbuck Bay and Smiths Lake areas with elevated parking areas. This is a result of trying to achieve compliant vehicular access grades and yet still maintain a reasonable relationship to natural ground levels. It is considered that in this instance the design has achieved a desirable outcome.

#### ***Privacy (Aural and Visual)***

Given the residential locality it is considered that the level of impact on privacy is reasonable for the setting.

#### ***Visual Impact***

Given that the development is consistent with the surrounding locality, it is considered that the visual impact is not unreasonable with regard to the existing natural and built environment.

### ***Cumulative Impacts***

Given the steep nature of the site, which exacerbates the height issues, and given that the development is consistent with the character of the village it is considered that the minor variation in this instance will not lead to cumulative impacts for future developments.

#### ***c) The Suitability of the Site for the Development***

The subject site is bushfire prone which results in conditions being imposed in the development consent with regard to construction complying with the relevant bushfire protection requirements.

The proposal was referred to MidCoast Water with conditions to be imposed.

#### ***e) The Public Interest***

Approval of the development application would not create negative implications with regard to the public.

### **CONCLUSION**

It is concluded that the application for a two (2) storey dwelling and attached carport resulting in a maximum 8.87 metres overall height is considered acceptable upon this site. Clause 4.6 of the GLLEP "Exceptions to Development Standards" has been considered and it is found that the proposal meets the objectives of Clause 4.3 "Height of Buildings" standards as well as satisfying the overall objectives of the RU5 zone.

### **RECOMMENDATION**

It is recommended that Development Application DA-548/2017 for a two storey dwelling and attached carport on Lot 67 DP 249056, 16 Crown Close, Tarbuck Bay be approved in accordance with the conditions of consent contained in Annexure A.

## ANNEXURES

A: Conditions of Consent.

### GENERAL CONDITIONS

#### 1. Development in accordance with approved plans

The development must be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

| Plan type/Supporting Document | Plan No. & version | Prepared by            | Dated    |
|-------------------------------|--------------------|------------------------|----------|
| Cover Sheet                   | A1.1               | Ian Sercombe Architect | 23/05/17 |
| BASIX                         | A1.2               | Ian Sercombe Architect | 23/05/17 |
| Landscape                     | A1.3               | Ian Sercombe Architect | 27/06/17 |
| Site-Roof Plan                | A2.1               | Ian Sercombe Architect | 27/06/17 |
| Lower Floor Plan              | A2.2               | Ian Sercombe Architect | 27/06/17 |
| Upper Floor Plan              | A2.3               | Ian Sercombe Architect | 27/06/17 |
| Elevations                    | A3.1               | Ian Sercombe Architect | 27/06/17 |
| Elevations                    | A3.2               | Ian Sercombe Architect | 27/06/17 |
| Sections                      | A3.3               | Ian Sercombe Architect | 23/05/17 |

The approved plans and supporting documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

**Reason:** Information and to ensure compliance.

#### 2. Compliance with National Construction Code Series- Building Code of Australia

All building work must be carried out in accordance with the requirements of the *National Construction Code Series - Building Code of Australia* as in force on the date the application for the relevant construction certificate or complying development certificate was made.

**Reason:** Prescribed condition under the *Environmental Planning & Assessment Regulation 2000*.

#### 3. Insurance requirements under *Home Building Act 1989*

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates has been given documentary evidence or written notice of the following information:

- a) in the case of work for which a principal contractor is required to be appointed:
  - i) the name and licence number of the principal contractor, and
  - ii) if the contractor is required to have a contract of insurance for any authorised works, a Statement of Cover with the name of the insurer by which the work is insured under Part 6 of that Act .
- b) in the case of work to be done by an owner-builder:
  - i) the name of the owner-builder, and
  - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified above becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates has been given the notice of the updated information.

**Reason:** Prescribed condition under the *Environmental Planning & Assessment Regulation 2000*.

#### **4. Notification of *Home Building Act 1989* requirements**

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- a) in the case of work for which a principal contractor is required to be appointed:
  - i) the name and licence number of the principal contractor, and
  - ii) the name of the insurer by which the work is insured under Part 6 of that Act,
- b) in the case of work to be done by an owner-builder:
  - i) the name of the owner-builder, and
  - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified above becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

**Reason:** Prescribed condition under the *Environmental Planning & Assessment Regulation 2000*.

#### **5. Adjustment to utility services**

All adjustments to existing utility services made necessary by the development are to be undertaken at no cost to Council.

**Reason:** To ensure utility services remain in a serviceable condition.

#### **6. Support for neighbouring buildings**

If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- a) protect and support the adjoining premises from possible damage from the excavation, and
- b) where necessary, underpin the adjoining premises to prevent any such damage.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to this condition not applying.

**Reason:** To protect development on adjoining premises. Prescribed condition under the *Environmental Planning and Assessment Regulation 2000*.

## **PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

**The following conditions must be complied with prior to the issue of any construction certificate:**

### **7. Structural details**

Prior to the issue of a construction certificate, structural drawings prepared by a suitably qualified and experienced structural engineer must be submitted to and approved by the certifying authority. The plans must include details for:

- a) All reinforced concrete floor slabs and/or beams or raft slab (having due regard to the possible differential settlement of the cut and fill areas.
- b) Footings of the proposed structure.
- c) Structural steel beams/columns.

**Reason:** To ensure structural stability and safety.

### **8. Plans of retaining walls and drainage**

Prior to the issue of a construction certificate plans and specifications of retaining walls or other approved methods of preventing the movement of soil, where excavation or fill exceeds 600mm above or below the existing ground level, must be submitted to and approved by the certifying authority, Adequate provision must be made for drainage in the design of the structures.

**Reason:** To ensure site stability and safety.

### **9. MidCoast Water approval**

Prior to the issue of a construction certificate, a Certificate of compliance from MidCoast Water, stating that satisfactory arrangements have been made and all payments finalised for the provision of water supply and sewerage to the development, must be submitted to the certifying authority.

**Reason:** To ensure suitable water and sewage disposal is provided to the development.

### **10. Driveway levels application**

Prior to the issue of a construction certificate, a Driveway Levels Application must be submitted to Council for approval. A Driveway Levels Application Form must be completed and submitted to Council together with the application fee and all required plans and specifications.

Driveways must be constructed by a qualified/licensed contractor at no cost to Council in accordance with the driveway levels and construction standards issued by Council.

**Reason:** To ensure works within Council's road reserve are constructed to a suitable standard for public safety.

### **11. Preparation of a final landscape plan**

A landscape plan and schedule, shall be submitted to the certifying authority for approval prior to the issue of a Construction Certificate. The plan shall clearly show:

1. The location of the approved dwelling, and associated features such as driveways, paths, rain-gardens and utilities.
2. The locations of all trees that are to be retained; comprising the trees identified in these conditions.
3. The proposed protection measures to be deployed to protect trees to be retained from harm and impacts associated with the development (eg. protection fencing, exclusion areas, hand-installation of stormwater and sewer connections in the critical root zone of trees to be retained, etc).
4. The use of predominantly native flora species that grow in coastal locations and littoral rainforests in the Pacific Palms locality.
5. Details of plant species to be used in landscaping including quantities, densities and height and spread at maturity.
6. Details of planting locations.
7. Details of planting procedure and maintenance.
8. The planting of at least four (4) appropriate local native tree species (such as Tuckeroo, Cheese Tree, etc).

**Reason:** To provide landscaping to the subject land for local amenity and to partially compensate for the removal of trees from the land.

## **12. Bond required to guarantee against damage to public land**

Prior to the issue of a construction certificate, a Damage Bond Application form together with payment of a bond in the amount of \$2000 and an administration fee of \$330 must be submitted to Council. The bond is payable for the purpose of funding repairs to any damage that may result to Council assets from activities/works associated with the construction of the development and to ensure compliance with Council standards and specifications.

A final inspection will be carried out by the responsible Council officer and the bond (minus any fees required for additional inspections) will be considered for refund:

- a) once all works, including landscaping, driveway construction, turfing, etc, have been completed, and
- b) following issue of an occupation certificate by the certifying authority.

The damage bond is reviewed periodically and therefore the fee and bond amount payable will be determined from Council's current fees and charges document at the time of lodgement of the damage bond.

**Reason:** Protection of public assets.

## **13. Construction of buildings in bushfire-prone areas (multiple BAL)**

Prior to the issue of a construction certificate, plans and specifications detailing the construction of the building to Bushfire Attack Level (BAL) 29 for the entire roof and the northwest, southwest and southeast elevations and (BAL) 19 for the remaining northeast elevation as defined in Australian Standard AS 3959-*Construction of buildings in bushfire-prone areas and section A3.7 Addendum Appendix 3 of "Planning for Bush Fire Protection"* must be submitted to and approved by the certifying authority.

**Reason:** To ensure the development complies with bush fire construction standards.

#### **14. Waste management plan**

Prior to the issue of a Construction Certificate, a waste management plan prepared in accordance with the requirements of Council's Waste Management Policy must be submitted to and approved by the certifying authority.

**Reason:** To ensure adequate and appropriate management of waste and recycling.

#### **PRIOR TO THE COMMENCEMENT OF ANY WORK ASSOCIATED WITH THIS CONSENT**

**The following conditions must be satisfied prior to the commencement of any building construction or subdivision work:**

#### **15. Construction certificate required**

Prior to the commencement of any building or subdivision construction work (including excavation), a construction certificate must be issued by a certifying authority.

Enquiries regarding the issue of a construction certificate can be made to Council's Customer Service Centre on 6591 7222.

**Reason:** Statutory requirement under the *Environmental Planning and Assessment Act 1979*.

#### **16. Notification of commencement and appointment of principal certifying authority**

Prior to the commencement of any building or subdivision construction work (including excavation), the person having the benefit of the development consent must appoint a principal certifying authority and give at least two (2) days' notice to Council, in writing, of the persons intention to commence construction work.

**Reason:** Statutory requirement under the *Environmental Planning and Assessment Act 1979*.

#### **17. Site access**

Public access to the site and building works, materials and equipment on the site is to be restricted, when building work is not in progress or the site is unoccupied. The public safety provisions must be in place prior to the commencement of any demolition, excavation or building works and be maintained throughout construction.

**Reason:** To ensure public health and safety during the construction of the development.

#### **18. Installation of erosion & sediment control measures**

Prior to the commencement of work, erosion and sediment controls must be in place in accordance with Great Lakes Council Erosion and Sediment Control Policy and "*The Blue Book – Managing Urban Stormwater (MUS): Soils and Construction*" (Landcom). In particular, the following erosion and sediment control measures must be installed:

- a) Silt fence or sediment barrier.
- b) Temporary driveway from the edge of road to the building site.
- c) Temporary downpipes immediately upon installation of the roof covering.

Note: Council may impose on-the-spot fines for non-compliance with this condition.

**Reason:** To protect the environment from the effects of erosion and sedimentation.



## 19. Pollution prevention sign

Council's "PREVENT POLLUTION" sign must be erected and maintained in a prominent position at the frontage of the property so that it is clearly visible to the public for the duration of construction work.

Council's "PREVENT POLLUTION" sign can be purchased at Council's Customer Enquiry Counter at the Forster, Tea Gardens and Stroud administration buildings.

**Reason:** To increase industry and community awareness of developer's obligations to prevent pollution and to assist in ensuring compliance with the statutory provisions of the Protection of the Environment Operations Act 1997.

## 20. Trees to be protected

Prior to the commencement of work, trees that are to be retained must be protected by a fence so as to minimise disturbance to existing ground conditions within the dripline of the trees. The fence must be constructed:

- a) with a minimum height of 1.2 metres,
- b) outside the dripline of the tree,
- c) of steel star pickets at a maximum distance of 2 metres between pickets with orange barrier mesh, or similar, attached to the outside of the fence and continuing around its perimeter to enclose the tree

The fence must be maintained for the duration of the site clearing, preparation and construction works and signs must be erected to clearly identify the area as a restricted access zone.

**Reason:** To ensure the health and safety of trees during the construction of the development.

## 21. Toilet facilities - sewerred areas

Prior to the commencement of work, toilet facilities must be provided at or in the vicinity of the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be a standard flushing toilet connected to a public sewer.

**Reason:** To maintain public health.

## 22. Site construction sign

Prior to the commencement of work, a sign or signs must be erected in a prominent position at the frontage to the site.

- 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 work site is prohibited.

The 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.

**Reason:** Prescribed condition under the *Environmental Planning and Assessment Regulation 2000*.

## **CONDITIONS TO BE SATISFIED DURING DEVELOPMENT WORK**

**The following conditions must be complied with during any development work:**

### **23. Construction times**

Construction and/or demolition works, including deliveries on or to the site must not unreasonably interfere with the amenity of the neighbourhood and must occur only in accordance with the following:

Monday to Friday, from 7 am to 6 pm.

Saturday, from 8 am to 1 pm.

No construction and/or demolition work, including deliveries are to take place on Sundays or Public Holidays.

**Reason:** To maintain amenity during construction of the development.

### **24. Builders rubbish to be contained on site**

All builders rubbish is to be contained on the site in a suitable waste bin/enclosure. Building materials must be delivered directly onto the property. Footpaths, road reserves and public reserves must be maintained clear of rubbish, building materials and other items at all times.

**Reason:** To ensure that materials and waste do not adversely affect traffic or pedestrian safety and amenity.

### **25. No filling around trees**

No soil or fill material is to be placed within the dripline of a tree or to cause changes in the surface level.

**Reason:** To maintain the health of the tree.

### **26. Maintenance of sediment and erosion control measures**

Sediment and erosion control measures must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

**Reason:** To protect the environment from the effects of erosion and sedimentation.

### **27. Compliance with waste management plan**

During demolition and/or construction of the development, waste disposal must be carried out in accordance with the approved waste management plan.

**Reason:** To ensure waste is minimised and recovered for recycling where possible.

### **28. Survey of building location**

A survey certificate prepared by a registered surveyor must be submitted to the certifying authority at the following stages of the development:

- a) Prior to the construction of footings or first completed floor slab showing the area of land, building under construction and boundary setbacks.
- b) Upon completion of the roof timbers, before roofing is laid, indicating the ridge height to AHD.

**Reason:** To ensure compliance with the approved plans.

## **29. Asset Protection Zone (APZ)**

At the commencement of building works and in perpetuity, the entire property must be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standard for asset protection zones.

**Reason:** To provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building.

## **30. Utilities with regard to bushfire protection**

Electricity and gas services are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

**Reason:** To ensure compliance is achieved with Planning for Bushfire Protection.

## **31. Landscaping with regard to bushfire protection**

Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

**Reason:** To ensure compliance with Planning for Bushfire Protection 2006.

## **32. Tree Removal**

Only trees as identified as trees to be removed on the Site-Roof Plan prepared by Ian Sercombe dated 27/06/17 with plan reference A2.1 shall be removed for the construction of the approved development.

**Reason:** To maximise the retention of trees on the land within the development.

## **33. Procedure for the removal of trees**

During the physical removal of the approved tree/s to be removed, the following shall be adopted at all times:

- a) Tree removal shall be conducted by licensed and qualified arborists or tree removal contractors.
- b) Tree removal personnel shall inspect the crown, foliage and trunks of trees that require removal immediately prior to any felling to investigate the presence of Koalas. If a Koala is detected, the tree and no other surrounding trees shall be cleared until the animal has dispersed of its own free will from the area.
- c) Removal of approved trees shall be conducted using dismantling and lowering only (or other appropriately sensitive techniques) and in a manner that protects trees that are to be retained on and adjacent to the land.
- d) Removal of approved trees shall be conducted in a manner that avoids the movement of machinery in the root zones of trees that are to be retained.
- e) Any damage to trees that are to be retained during the construction of the development shall be reported immediately to Council's Tree Management Officer. Remediation or repair actions identified by this officer shall be conducted on the land to assist minimise the harm associated with any such damage.

Trees and vegetation removed from the subject land shall be commercially re-used (logs or mulch), used in site landscaping (as mulch or edging or cover for terrestrial fauna) or retained and utilised by the occupier of the lot for the purpose of fuel for internal wood combustion heaters or stoves. Windrowing and pile-burning shall be avoided, except with the consent of the NSW Rural Fire Service.

**Reason:** To protect significant trees and minimise the impacts of the development on native vegetation.

#### **34. Management of Trees to be retained**

The construction of the approved development (and associated works) shall be conducted in a manner that avoids impact, harm or removal of trees that (as required in these conditions) are to be retained. Stockpiles, machinery and equipment shall not be used or placed in the root zones of trees that are to be retained. Landform modification (cut/ fill) shall not occur in the primary root zones of trees that are to be retained.

Those trees that are identified to be retained as specified in these conditions shall be protected from direct and indirect harm associated with any aspect of the approved construction. These trees can be pruned (with pruning in accordance to the relevant Australian Standard) and monitored by the occupier of the land for safety and health.

No trees outside the area of the subject land shall be harmed or removed and such trees shall be retained in their present state.

Retained trees shall be managed in accordance with the relevant instruments and legislation.

The rain garden is to be suitably located so to ensure it is not constructed in the root zone of any trees to be retained

**Reason:** To protect trees that are required to be retained.

### **PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

**The following conditions must be satisfied prior to any occupation or use of the building:**

#### **35. Works to be completed**

The building/structure or part thereof must not be occupied or used until an interim occupation/final occupation certificate has been issued in respect of the building or part.

**Reason:** To ensure compliance with the development consent and statutory requirements.

#### **36. Implementation of the Landscape Plan**

The Registered Proprietor of the land, or their agents, shall fully implement all of the required actions outlined in the landscape plan. The final occupation certificate shall not be issued until such time as the required landscaping set-out in the relevant plan has been appropriately established.

**Reason:** To appropriately conduct landscaping on the subject land.

**37. Sealed driveway in accordance with approved Driveways Level Application**

Prior to the issue of a final occupation certificate, a driveway must be constructed from the edge of the road formation to the property boundary in accordance with the approved Driveway Levels Application. Written confirmation from Council must be obtained stating that the constructed driveway is to Councils' satisfaction.

**Reason:** To ensure suitable vehicular access to the development.

**38. Internal driveway in accordance with the approved plans**

Prior to the issue of a final occupation certificate, a driveway must be constructed from the property boundary to the proposed car spaces in accordance with the approved plans.

**Reason:** To ensure suitable vehicular access is provided to the development.

**39. BASIX Compliance**

Prior to the issue of a final occupation certificate, all of the required commitments listed in the BASIX certificate must be fulfilled.

**Reason:** Prescribed condition under the *Environmental Planning and Assessment Regulation 2000*.

**40. House numbering**

Prior to the issue of a final occupation certificate, the street number must be displayed at the main driveway entrance approved for the property. The street number for this property is 16.

**Reason:** To ensure proper identification of buildings.

**41. Bushfire mitigation requirements**

Prior to the issue of an interim occupation certificate, the following bush fire mitigation requirements must be incorporated into the completed development:

- a) The new building works are to be constructed in accordance with to Bushfire Attack Level (BAL) 29 for the entire roof and the northwest, southwest and southeast elevations and (BAL) 19 for the remaining northeast elevation as defined in Australian Standard AS 3959-*Construction of buildings in bushfire-prone areas and section A3.7 Addendum Appendix 3 of "Planning for Bush Fire Protection"* must be submitted to and approved by the certifying authority.

**Reason:** To improve bush fire safety.

**42. MidCoast Water Certificate of Attainment**

Prior to the issue of a final occupation certificate, a certificate of attainment from MidCoast Water, stating that satisfactory arrangements have been made for the provision of MidCoast Water Services to the development, must be submitted to the principal certifying authority.

**Reason:** To ensure suitable water and sewage disposal is provided to the development.

**43. Stormwater treatment system**

Prior to issue of any occupation certificate, the raingarden must be constructed in accordance with the approved plans (Landscape Plan Drawing No. A1.3 rev. date 27/6/17), including any amendments contained on these plans and conditions. The raingarden must meet the following criteria:

- a) Have a minimum filter surface area of 3m<sup>2</sup> and positioned along the contours. The raingarden is to receive overflow from a 5kL rainwater tank collecting a minimum 100% of the roof area. Runoff from the driveway area is to be collected and directed to the raingarden in accordance with the designs submitted.
- b) Have a minimum of 800mm fall from the raingarden inlet to the outlet discharge point into the stormwater system.
- c) Be consistent with the specifications contained in Great Lakes Council's Fact Sheet 'Designing a raingarden: Water Sensitive Design section, Great Lakes Development Control Plan' (April 2014) containing (from the base) 150mm of washed 5mm gravel housing a 90mm slotted drainage pipe, 100mm of coarse washed sand with particle size of 1mm, 400mm of sandy loam filter media and 100mm of depth for water detention. The top of the garden is to be finished a minimum of 50mm (freeboard) above the maximum water level water collection.
- d) Contain filter media of uniform sandy loam texture consistent with the specifications contained in Great Lakes Council's Fact Sheet 16 'Filter Media for Raingardens: Guidance for Water Sensitive Provisions of the Great Lakes Development Control Plan' (April 2014).
- e) Have a 90mm slotted drainage pipe at the base of the raingarden is to be laid on a 1:100 grade and connected to the inter-allotment drainage. All drainage works must be installed by a suitably qualified person and in accordance with the requirements of Australian Standard AS/NZS 3500.3: Plumbing and drainage – Stormwater drainage.
- f) Contain an overflow pipe finished 100mm above the sandy loam filter media and topped with a grated cap so that the raingarden retains 100mm of water following rainfall.
- g) Inlet pipes to the raingarden from the rainwater tank overflow, direct roof runoff and driveway are to contain rock protection to prevent erosion.
- h) Have 50% of the raingarden area planted with a minimum of 2 species from Great Lakes Council's Fact Sheet 15 'Local Plant Selection for Raingardens, Guidance for Water Sensitive Provisions of the Great Lakes Development Control Plan' (April 2014), at densities indicated in the fact sheet. The remaining area is to be planted with species of the owners choosing which are suited to intermittently dry and wet conditions.
- i) Be protected by sediment and erosion control measures during construction and be connected to the stormwater and planted after all hardstand areas have been paved / sealed and cleaned.
- j) Ensure raingarden is located outside of the structural root zone of the trees.

**Reason:** To ensure water quality requirements as contained in the Water Sensitive Design section of the Great Lakes Development Control Plan are met.

#### **44. Compliance of Raingarden to Plans**

Prior to the issue of any occupation certificate, written certification by the builder or plumber is to be submitted to the certifying authority that construction levels and drainage lines have been installed in accordance with the approved stormwater drainage plans and conditions.

**Reason:** To ensure compliance with Council's water quality objectives and comply with the Water Sensitive Design section of the Great Lakes Development Control Plan and ensure that the raingarden is constructed in accordance with approved plans and standards and conditions of consent.

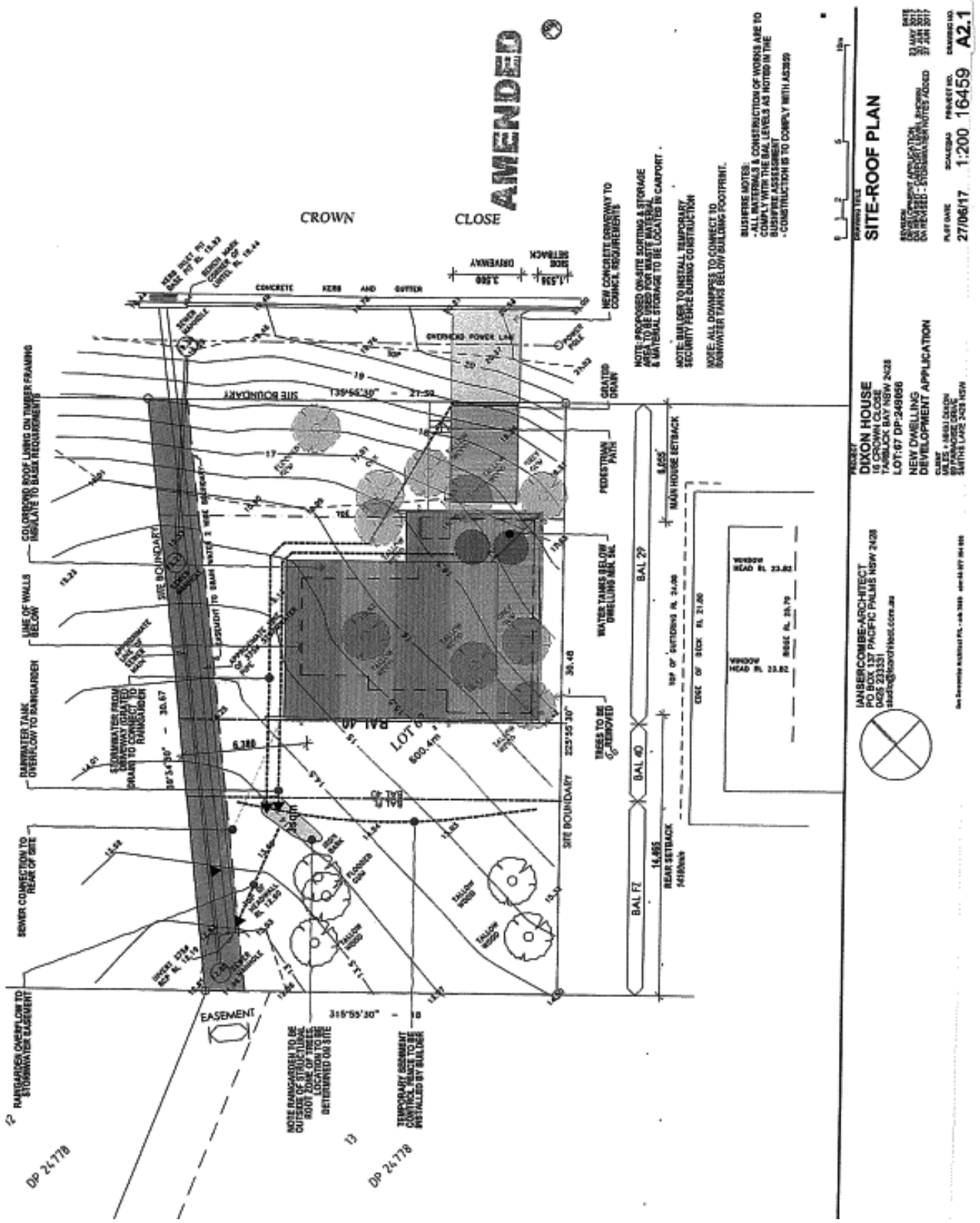
#### **45. Raingarden Maintenance**

Prior to issue of any occupation certificate a permanent notice identifying the location of the raingarden is to be displayed in the metre box or other visible locations on the property.

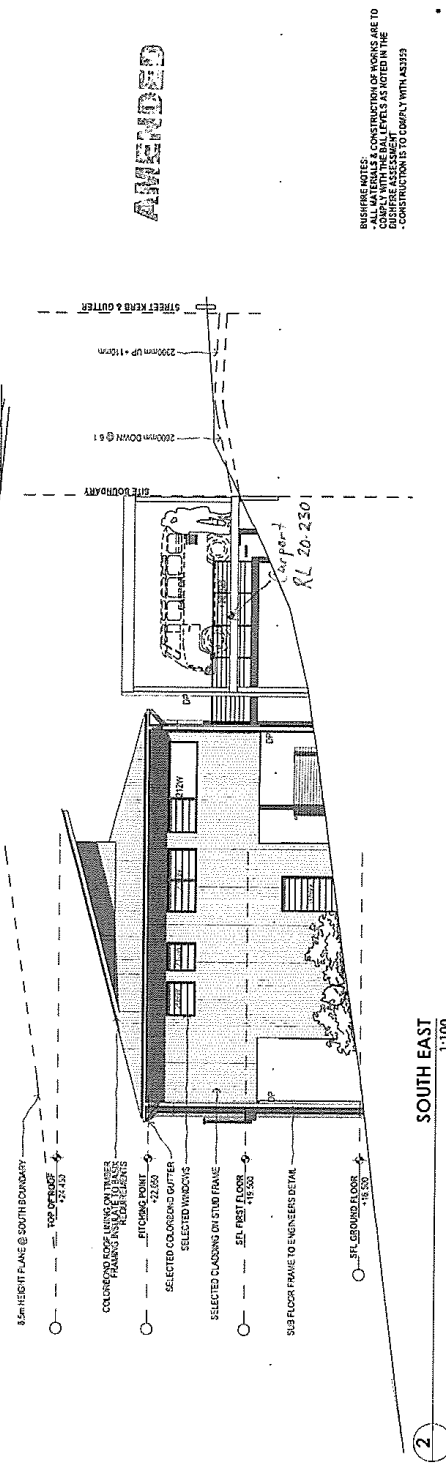
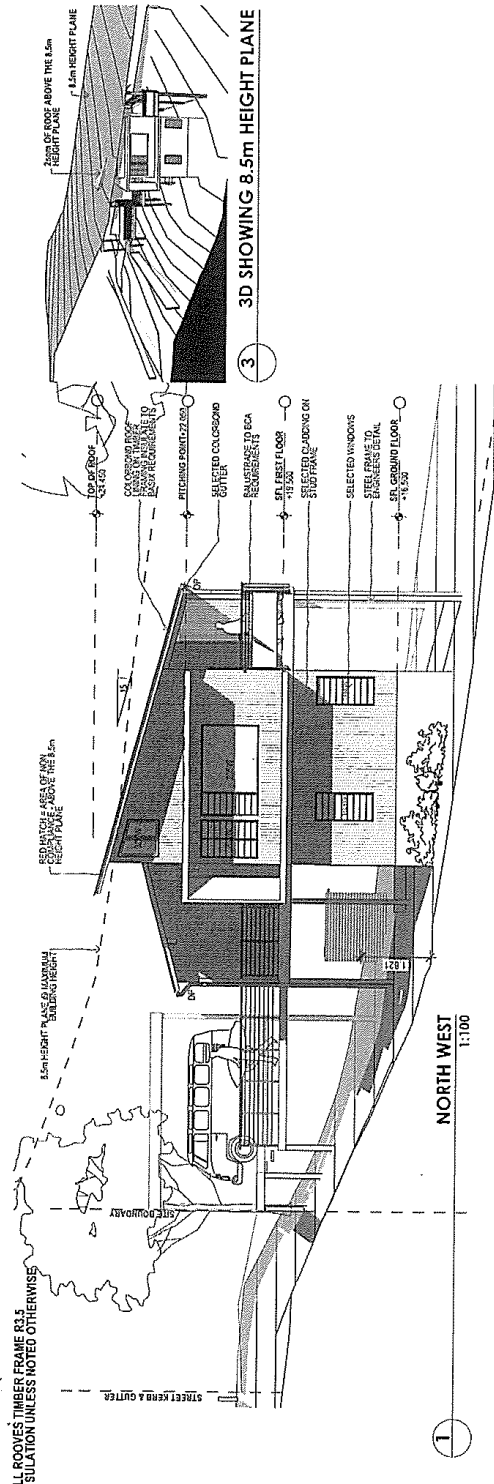
The raingarden shall be maintained by the owner in perpetuity including free draining filter media and approved plant species and densities (including the removal of weeds) and protection from erosion and scour within the raingarden.

**Reason:** To ensure that ongoing compliance with the Water Sensitive Design section of the Great Lakes Development Control Plan.

B: Site Roof Plan and Elevations.







APPROVED

**BUSINESS NOTES:**  
 - ALL MATERIALS & CONSTRUCTION OF WORKS ARE TO BE AS SHOWN IN THIS SET OF DRAWINGS  
 - CONSTRUCTION IS TO COMPLY WITH AS3159

**ELEVATIONS**  
 DRAWING TITLE  
 PROJECT NO. 1:100 16459 A3.1  
 DATE 27/06/17

**PROJECT**  
 DIXON HOUSE  
 1045/1046 PACIFIC  
 TARBURTON BAY NSW 2428  
 LOT 167 DP 248056  
 NEW DWELLING  
 NEW DEVELOPMENT APPLICATION  
 CLIENT  
 CONTRACT NO. 16459 A3.1  
 DRAWING NO. 27/06/17

**MANAGER ARCHITECT**  
 1045/1046 PACIFIC  
 TARBURTON BAY NSW 2428  
 0485 233331  
 info@carverhick.com.au

**SYMBOLS**  
 DW DISBURSERS  
 F BAR FREEZER  
 FLOOR FLOOR  
 GAS GAS VALVE  
 HOSE HOSE TAP MARKS  
 INVERTER INVERTER  
 R REFRIGERATOR  
 SW SOLAR HOT WATER  
 VP WATER PUMP  
 WT WATER TANK



**2 DA 2017-2547 - TWO LOT SUBDIVISION - 14 NEOTSFIELD AVENUE,  
GLOUCESTER**

**Report Author** Aaron Kelly, Strategic Planner

**File No. / ECM Index** DA 2017/2547

**Date of Meeting** 16 August 2017

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**DETAILS**

Date Received: 7 April 2017

Applicant: Calco Surveyors Pty Ltd

Owner: Mrs M Hayward

Land: 14 Neotsfield Avenue, Gloucester

Property Key: Lot 162 DP 1155029

Zoning: Large Lot Residential (R5) (GLEP 2010)

**SUMMARY OF REPORT**

- Development application for a two (2) lot subdivision within the R5 Large Lot Residential Zone.
- The application was notified with ten (10) submissions being received.
- The proposal requires Council to release a restriction on the land which prohibits subdivision of the land.
- The development complies with Gloucester Local Environmental Plan 2010 and Development Control Plan 2010.

**SUMMARY OF RECOMMENDATION**

The development application be approved subject to conditions.

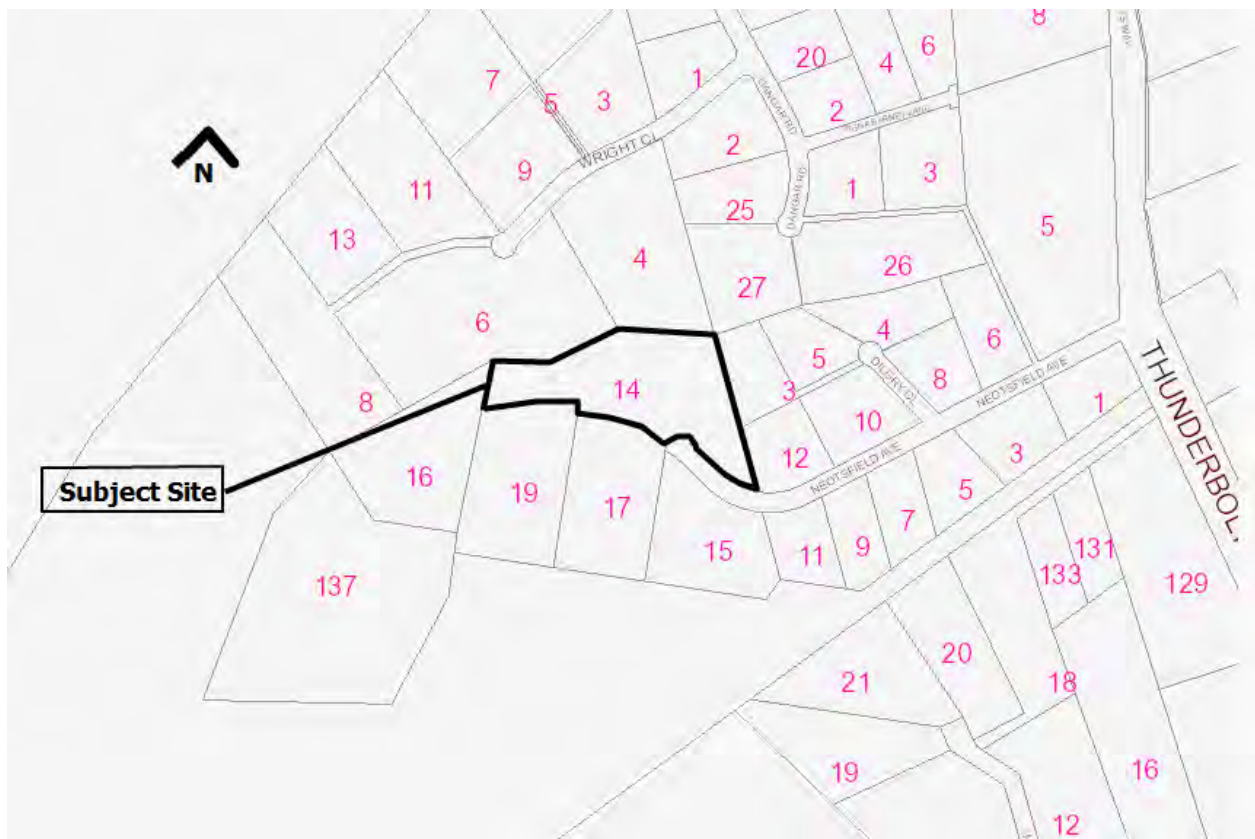
**FINANCIAL/RESOURCE IMPLICATIONS**

Cost of defending any appeal against Council's decision.

**LEGAL IMPLICATIONS**

The applicant has the right to appeal against Council's decision.

## SUBJECT SITE AND LOCALITY



## SITE DESCRIPTION

The subject site is an existing Large Lot Residential (R5) Zoned parcel located at the head of a cul-de-sac known as Neotsfield Avenue, Gloucester. A dwelling currently exists on the land.

A Right of Carriageway adjoins the southern boundary and provides access to Neotsfield Avenue for three properties.

Surrounding land uses (known as the first stage of “The Meadows” estate) is for rural residential purposes with allotment sizes of 4000m<sup>2</sup> or greater.

## PROPOSAL

This is an Application seeking a Development Consent to subdivide the subject allotment into two (2) lots.

A subdivision proposal plan submitted with the Application nominates the lots as proposed Lots 1 and 2. The subdivision can be summarised in the following table:

| Lot No. | Area                | Frontage to Neotsfield Avenue |
|---------|---------------------|-------------------------------|
| 1       | 4,570m <sup>2</sup> | Approx. 84 metres             |
| 2       | 1.16 hectares       | Approx. 19 metres             |

Proposed Lot 1 will be vacant whilst the proposed Lot 2 will contain the existing residence and associated driveway gaining access to Neotsfield Avenue. Proposed Lot 1 will also have direct access from Neotsfield Avenue.

A plan of the proposed subdivision is included in Annexure B.

## ASSESSMENT

### SECTION 79C MATTERS FOR CONSIDERATION -

The following matters listed under Section 79C of the *Environmental Planning and Assessment Act, 1979*, are relevant in considering this application:

- a) ***The provisions of any environmental planning instrument; any proposed instrument that is or has been the subject of public consultation and which have been notified to the consent authority; any DCP; any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F; any matters prescribed by the regulations; any coastal zone management plan that apply to the development application on the subject land.***

### GLOUCESTER LOCAL ENVIRONMENTAL PLAN 2010

Having regard for the matters for consideration detailed in Section 79C(1) of the *Environmental Planning & Assessment Act 1979*, the following is a summary of the evaluation of the proposal pursuant to the provisions of the relevant clauses of the Gloucester Local Environmental Plan 2014.

**Zone:** Large Lot Residential (R5)

**Definition:** Subdivision of Land

| LEP Requirement         | Summary of Requirement  | Complies |
|-------------------------|---|----------|
| <b>Zone Objectives</b>  | <ul style="list-style-type: none"><li><i>To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.</i></li><li><i>To ensure that large residential allotments do not hinder the proper and orderly development of urban areas in the future.</i></li><li><i>To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.</i></li><li><i>To minimise conflict between land uses within the zone and land uses within adjoining zones.</i></li></ul> | Yes      |
| <b>Permissible use</b>  | <i>Subdivision being permitted with Consent in the Large Lot Residential (R5) Zone</i>  | Yes      |
| <b>Minimum Lot Size</b> | <i>Minimum lot size of 4,000m<sup>2</sup> in the Gloucester LEP minimum lot size map</i>  | Yes      |

#### Clause 1.9A Suspension of covenants, agreements and instruments

The land is burdened by a covenant that restricts further subdivision of the land for residential purposes. The restriction benefits other allotments within the original subdivision and Council is the authority, empowered to vary, release or modify the restriction.

Clause 1.9A of the LEP states that:

- 1) For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.'

As Council is the authority, empowered to vary, release or modify the restriction, it is considered that the covenant does apply in consideration of the application. It is therefore necessary to determine whether the restriction should be varied, released or modified.

The subject site was created in 2010 by way of a minor boundary adjustment. The restriction applying to the parent lot was not released or extinguished at the time and carries over to the subject land.

The restriction was registered on the parent lot in 2004. The Gloucester Local Environmental Plan 2000 (GLEP 2000) was the relevant local planning instrument in force at this time.

In 2010 GLEP 2000 was repealed with gazettal of GLEP 2010. Under GLEP 2010 the land was zoned R5 Large Lot Residential and a minimum lot size of 4000m<sup>2</sup> was applied to the land. The new zoning of the land recognised the strategic value of the land for further subdivision due to its proximity to infrastructure and services.

Accordingly, subdivision of the land as proposed is permissible with consent under the provisions of GLEP 2010.

It is therefore considered appropriate that the restriction on subdivision of the land be released and consideration for any subdivision be made in keeping with the provisions of the GLEP 2010 and the Environmental Planning and Assessment Act 1979.

#### **DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS**

There are no applicable Draft Environmental Planning Instruments that have been placed on public exhibition that are relevant to the assessment of this Application.

#### **STATE ENVIRONMENTAL PLANNING POLICIES (SEPP's), AND OTHER STATE GUIDELINES & POLICIES**

There are no State Environmental Planning Policies (SEPP's) or any other state guidelines and policies applicable to the assessment of this Application.

#### **DEVELOPMENT CONTROL PLAN 2014**

Having regard for the matters for consideration detailed in Section 79C(1) of the Environmental Planning & Assessment Act 1979, the following is a summary of the evaluation of the proposal pursuant to the relevant provisions of the Gloucester Development Control Plan 2014.

| <b>Development Control Requirement</b>              | <b>Requirement</b>  | <b>Complies</b> |
|---|---|-----------------|
| <b>Subdivision of Land Development Guidelines</b>   |   |                 |
| <b>5.0 Restrictions on Intensity of Development</b> |   |                 |
| <b>5.1 Building Envelope and Setback provisions</b> | <i>Ensuring the Building Envelope and setback of any future building complies with the Building Line Setback Guidelines</i> | Yes.            |
| <b>6.0 Siting for the Design of Buildings</b>       |   |                 |
| <b>6.1 Adjoining Residential</b>                    | <i>To protect views and maintain privacy for nearby residential dwellings.</i>  | Yes.            |
| <b>7.0 Service provision</b>                        |   |                 |
| <b>7.2 Rural Residential Subdivision</b>            | <i>Ensuring all services are provided to all new lots</i>   | Yes.            |
| <b>7.5 Easements</b>                                | <i>To ensure appropriate easements are provided where necessary</i>   | N/A.            |

\* Non-complying issues discussed below

The proposed subdivision is generally consistent with provisions of the Gloucester Shire Council Development Control Plan 2010 and the objectives of the Subdivision of Land Development Guidelines contained therein.

The proposal is considered to be sensitive to topography and natural features with minimal impacts on the environment. Both lots will have acceptable access to services and adequate provision for stormwater drainage. Minimal works will be required as a result of the proposal.

**b) *The likely impacts of development including environmental impacts on both natural and built environments and social/economic impacts in the locality***

**Views**

It is not considered that an additional allotment creating an additional opportunity for a new dwelling on the site, will adversely impact on views and vistas from existing residences in the estate.

**Access, Transport and Traffic**

The subject proposal for one (1) additional lot will have minimal effects on transport and traffic within the Meadows Estate and surrounding road network.

**Utilities**

The land is provided with satisfactory access to utilities.

**c) *The Suitability of the Site for the Development***

There are no site constraints or hazards that would prevent subdivision of the land as proposed. The land is afforded with suitable access and availability to necessary infrastructure. Subdivision of the land as proposed is in keeping with the existing subdivision pattern of the locality.

**d) *Any Submissions Made in Accordance with the Act or Regulations***

The application was notified to adjoining owners in accordance with the Gloucester Development Control Plan 2010 from 12 April to 3 May 2017. As a result of Notification a total of ten (10) submissions were received. Issues raised in submissions and responses to those issues are detailed below:

| Issue                              | Response  |
|------------------------------------|---|
| Privacy and Views                  | It is not considered primary views within "The Meadows" estate will be compromised by a future dwelling within the proposed Lot 1.  |
| Restriction of Further Subdivision | The consistency of the proposal with any Section 88B Instrument attached to the linen plan for "The Meadows" estate has been discussed elsewhere in this report. In summary, Council is the empowering authority to release the restriction as to user over the subject site which is consistent with previous subdivision approvals in the immediate area and the provisions of Clause 1.91A of the Gloucester LEP 2010. |

**e) The Public Interest**

Development of land in keeping with the strategic plans and directions of Council is not contrary to the public interest.

**CONCLUSION**

The development has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979* and is considered to be a reasonable development suitable for the site and in the context of the locality. Accordingly, the application is recommended for approval.

**RECOMMENDATION**

It is recommended that:

1. Council release the restriction on Lot 162 DP 1155029 that restricts further subdivision of the land for residential purposes.
2. Development Application DA 2017/2547 for the two lot subdivision of Lot 162 DP 1155029, 14 Neotsfield Avenue, Gloucester be approved in accordance with the conditions of consent contained in Annexure A.



## ANNEXURES:

A: Conditions of Consent.

### Development is to be in accordance with approved plans

1. The development is to be implemented generally in accordance with the plans and supporting documents endorsed with the Council stamp, dated 17 October 2016 and authorised signature, and set out in the following table except where modified by any conditions of this consent.

| Plan Title   | Drawing No.                              | Prepared by             | Dated           |
|--|--|-------------------------|-----------------|
| Proposed Subdivision of Lot 29 DP1072350 Wright Close - Gloucester | Job No.: 3301<br>Drawing No.: DWG3301_DA | CalCo Surveyors Pty Ltd | 10 October 2016 |

In the event of any inconsistency between conditions of this development consent and the plans/ supporting documents referred to above, the conditions of this development consent prevail.

**Reason:** To ensure the development is completed in accordance with conditions of consent and approved plans.

### Consent Granted For Works within the Road Reserve

2. This development consent includes the works within the road reserve set out in the table below. The work must be carried out in accordance with the standard specified in the column opposite the work. All works are to include the adjustment and/or relocation of services as necessary to the requirements of the appropriate service authorities.

| Work                              | Standard to be provided   |
|-----------------------------------|---|
| Driveways<br>Rural – sealed roads | Council standard application form for consent for works on Public Land must be submitted to Council and approval given before any works may commence.<br><b>Application to undertake works on Public Land</b><br>In accordance with “Residential Vehicle Crossings – Standard Rural Vehicle Crossings”. |

**Reason:** To ensure compliance with the Roads Act 1993.

## PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

### Rural road number to be displayed

3. An application for a rural road number request is to be submitted to Council, together with the relevant fee, for each lot created. The proponent must permanently display the road number adjacent to the approved access of the lot/s. The application shall be submitted prior to the release of the plan of subdivision.

**Reason:** In accordance with the requirements of the Geographical Names Board New South Wales Address Policy.

### Construction of residential driveways

4. The developer is to construct, where not existing, a driveway entrance from the Neotsfield Avenue to the property boundary of the new proposed Lot 1 as part of the subdivision prior to release of the subdivision certificate.

**Reason:** To provide appropriate access to each new lot in accordance with Council standards.

### **Guarantee against damage to public land**

5. The proponent will be held responsible for the repair of any damage to roads, footpaths, driveway crossovers, stormwater drains or other assets caused as a result of construction works under this consent. Such damage is to be repaired prior to the release of the subdivision certificate.

**Reason:** To provide Council guarantee and to make the developer liable for any damage to public land.

### **Plan of Subdivision**

6. An application for a Subdivision Certificate must be made on the approved form. The Subdivision Certificate fees, in accordance with Council's adopted schedule of fees and charges, must accompany such application. Seven (7) copies of the plan of subdivision are to be submitted with the application for a subdivision certificate. The location of all buildings and/or other permanent improvements including fences and internal access driveways/roads must be indicated on 1 of the copies.

**Reason:** Statutory requirement under the *Environmental Planning and Assessment Act 1979*.

### **Electricity Supply Certificate**

7. Written evidence from an electricity supply authority is to be submitted with the application for a subdivision certificate stating that satisfactory arrangements have been made for the provision of electricity supply throughout the subdivision.

**Reason:** To ensure that all new lots as part of the subdivision have adequate provision for access to electricity.

### **Telephone Supply Certificate**

8. Written evidence from Telstra is to be submitted with the application for a subdivision certificate stating that satisfactory arrangements have been made for the provision of telephone supply throughout the subdivision.

**Reason:** To ensure that all new lots as part of the new subdivision have adequate provision of access to telecommunications.

B: Calco Surveyors Pty Ltd Drawing No.: DWG3361\_DWG, Plan of Proposed Subdivision of Lot 162 DP 1155029 - 14 Neotsfield Avenue - Gloucester.



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### **3 DA-574-2011 - CHANGE OF USE, SHED TO RESIDENCE, FAILFORD**

**Report Author** David Underwood, District Building Surveyor

**File No. / ECM Index** DA-574/2011

**Date of Meeting** 16 August 2017

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#### **DETAILS**

Date Received: 22 June 2011

Date deferred by Council: 17 April 2012, and  
28 October 2014

Applicant: Mr Brian Skelton

Owner: As above

Land: Lot 222 DP 753207, 18 Willow Point Road, Failford

Property Key: 17612

Zoning: RU2 Rural Landscape, under GLLEP 2014

#### **SUMMARY OF REPORT**

On 17 April 2012, Development Application No. 574/2011 was considered by Council where it was resolved to defer the development application for the proposed change of use from an existing shed to a residence, until Council's Revised Flood Policy is in place.

Following lengthy delays with finalising Council's Flood Policy revision, comments were received from Council's Investigations Engineer on 19 August 2014, where it was recommended that the current proposal be refused.

On 28 October 2014, the matter again went before Council where it was deferred at the request of the applicant. A report was then submitted by a structural engineer, stating that the shed structure could withstand the forces of flooding. In addition, the engineer's report included a proposal for a safe refuge area to be constructed through the roof of the existing shed. As 'Refuge in Place' is not in accordance with Council's DCP requirements it is not considered that staff can support this option where safe evacuation cannot be achieved.

#### **SUMMARY OF RECOMMENDATION**

That the development application for the proposed change of use, to use the mezzanine area of existing shed as a residence, and undertake building alterations to mezzanine on Lot 222 DP 753207, 18 Willow Point Road, Failford be refused on the following grounds:

- 1) The proposed change of use poses an unacceptable risk to the life of the occupants and emergency personnel in an evacuation in the event of a 1% 2060 flood event.
- 2) The proposal will require the Council, the State Emergency Service or other Government agency to increase provision of emergency equipment, personnel, welfare facilities or other resources associated with an evacuation resulting from flooding.
- 3) The proposed change of use is in non-compliance with the requirements and objectives of part 4.2 of Council's Development Control Plan 2014.

- 4) The proposed change in use is in non-compliance with the objectives and requirements of Part 7.3 Flood Planning, of Councils Local Environmental Plan 2014.

#### **FINANCIAL/RESOURCE IMPLICATIONS**

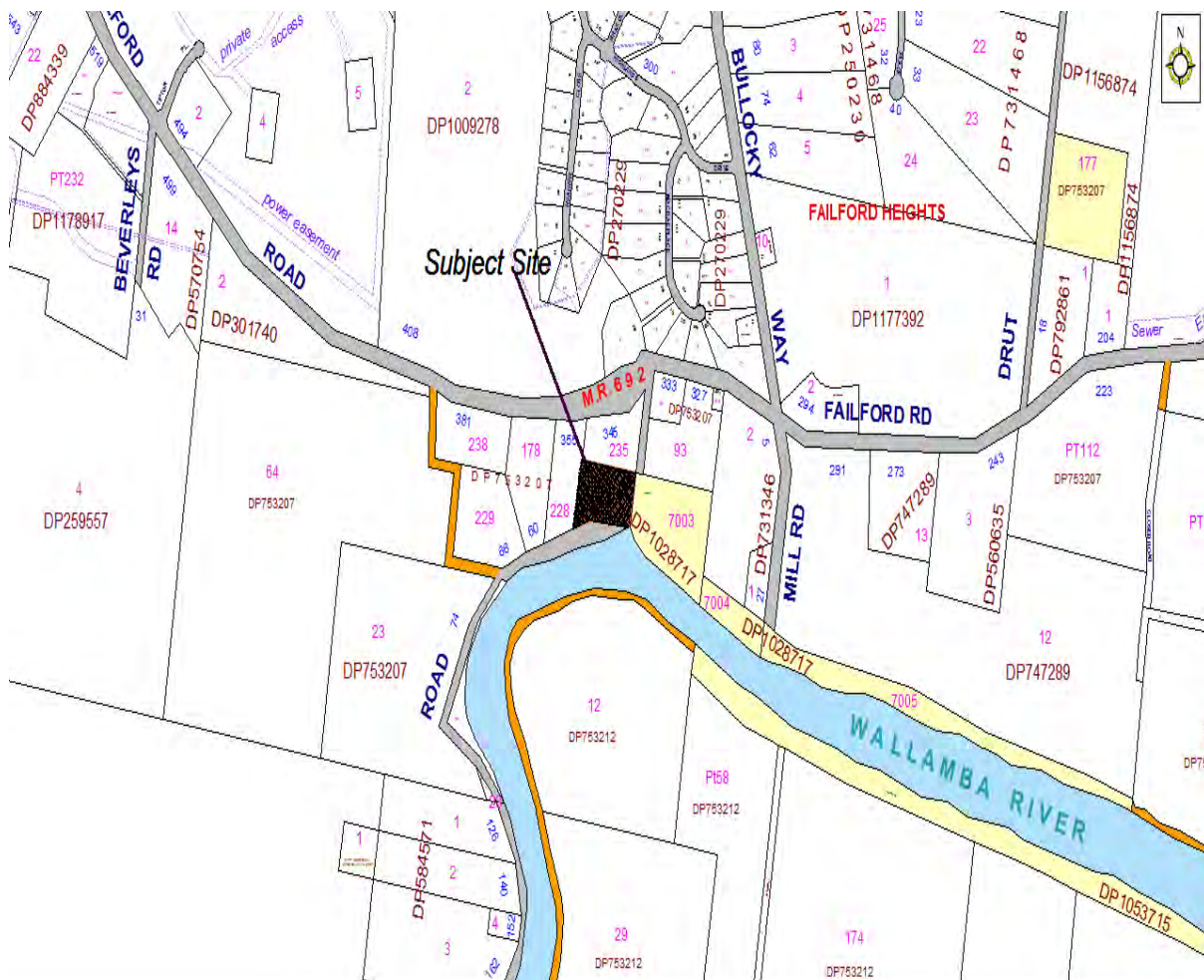
A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court with inherent cost implications.

#### **LEGAL IMPLICATIONS**

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court requiring legal representation.

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## SUBJECT SITE AND LOCALITY



## BACKGROUND

- In 1999 an application was approved by Council for a machinery shed. A development application was then lodged with Council in March 2000, for the conversion of the machinery shed to a dwelling. On 13 June 2000, Council refused the development application on the following grounds:
  1. The proposal did not comply with Council's Flood Policy.
  2. The proposal will increase the flood hazard or flood damage to property.
  3. The proposal will affect the safety of the proposed development in times of flood.
  4. The proposal will require Council, the State Emergency Service or any other Government Agency to increase provision of emergency equipment, person welfare facilities or other resources associated with evacuation resulting in flooding.
  5. The proposal will increase the risk to life and personal safety of emergency services and rescue personnel.
- On 22 June 2011, the subject development application was received to use part of the shed, the first floor mezzanine level, as a dwelling. This development application has been considered by Council on two (2) occasions, being 17 April 2012 and 28 October 2014, where it has been deferred on both occasions.

- Following Councils resolution from 28 October 2014 meeting, where it was resolved that the application be deferred at the applicants request, a meeting was then arranged with the owners Engineer and Councils Investigations Engineer to discuss the flooding issues further.
- On 20 November 2014, a meeting was held at the Council Offices with the applicant, his Engineer, Councils Investigations Engineer and Councils District Building Surveyor. The meeting was for the applicant to discuss what information he and the engineer could provide to Council, which would address Councils concerns relating to flooding. The applicant and his engineer wanted to discuss some technical details and seek guidance with regards to what information they would be best to investigate and ultimately provide.

On conclusion of the meeting, Councils Investigations Engineer indicated that the engineer needed to look at the structural stability of the building to withstand 1.5 metres per sec of flood forces, and to compile a flood evacuation report for the site so that they may be able to ensure that safe evacuation could be achieved for the property. The applicant then advised Council staff that they would look into these issues and would get back to us.

- On 13 January 2015, a letter was sent to the property owner requesting the information be provided, as discussed at the meeting with Council Officers on 20 November 14.
- On 17 February 2015, Councils Investigations Engineer provided the owners Design Engineer with details regarding flooding velocities for the locality. These details had been requested by the Design Engineer so to allow him to design parameters for the development with regards to flood issues.
- On 2 March 2015, the Design Engineer provided a proposed engineered solution to the issues of flooding and associated implications for occupants.
- On 10 March 2015, the engineering report was referred to Councils Investigations Engineer for comment. Final comments were received with regards to the Design Engineer's report on 3 May 2017. The comments received by Councils Investigations Engineer will be detailed in the report.

## **SITE DESCRIPTION**

The subject site is located off Willow Point Road, opposite the Wallamba River at Failford. The site is low-lying and is thickly vegetated with Casuarina along the northern and eastern portions of the site. The shed has a minimal setback from Willow Point Road and is located approximately 30.0 metres from the Wallamba River.

The existing Colorbond machinery shed has dimensions of 24m x 12m in area and is 6.5 metres high at the ridge. A 72.0m<sup>2</sup> mezzanine floor exists at the western end of the building. A toilet and shower have been installed in the north-western corner of the building on the ground floor and are connected to a pump system which in turn is connected to MidCoast Water's sewer main.

## **PROPOSAL**

The applicant originally proposed to occupy a 72.0m<sup>2</sup> mezzanine area of the existing shed. It is proposed to enclose the mezzanine area to make a formal kitchen and combined living/dining and bedroom area. The applicant also proposes to utilise the existing ground floor bathroom facilities. The remaining ground floor area of the shed will be utilised for storage and garaging.

In addition, the applicants engineer provided a report to Council on the 2 March 2015, which proposed a safe refuge space by constructing an elevated platform above the mezzanine area. To allow for suitable head height on the platform, the owner proposes to extend a small section of the roof to achieve a head height of 1.5 metres. The proposal also includes a window to be provided to the roof projection to allow for emergency evacuation/rescue by "air lifting" through the opening.



## ASSESSMENT

The following matters listed under Section 79C of the Environmental Planning and Assessment Act, 1979, are relevant in considering this application:

- a) ***The provisions of any environmental planning instrument; any proposed instrument that is or has been the subject of public consultation and which have been notified to the consent authority; any DCP; any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F; any matters prescribed by the regulations; any coastal zone management plan that apply to the development application on the subject land.***

### **Great Lakes Local Environmental Plan 2014 (GLLEP 2014)**

The subject site is zoned RU2 Rural Landscape under the provisions of Great Lakes LEP 2014. Part 4.2A of Great Lakes LEP 2014, "*Erection of Dwelling Houses in certain Rural and Environmental Zones*" identifies the circumstances where dwelling houses maybe erected on land within the zone. The subject site comprises the whole of an existing holding and as such, the erection of a dwelling house on the subject land is permissible with Council's consent.

In addition it is not considered that the proposal meets the requirements under Part 7.3 Flood Planning, specified in Councils LEP 2014. Specifically the proposal to have a 'refuge in place' elevated platform in the building does not meet objective 1a, which states "*to minimise the flood risk to life and property associated with the use of the land*".

The objectives of the LEP are as follows:

- a) *to minimise the flood risk to life and property associated with the use of land,*
- b) *to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
- c) *to avoid significant adverse impacts on flood behaviour and the environment.*

The proposal is also not considered to meet the requirements under Part 7.3 (3) & (4) of the LEP which states:

- 3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
  - c) *incorporates appropriate measures to manage risk to life from flood.*
- 4) *In determining a development application for development on land to which this clause applies, the consent authority must have regard to the following matters;*
  - b) *The sensitivity of the development in relation to future effective self-evacuation of the land, and if that is not possible, the low risk occupation in time of flood.*

Given that a 'refuge in place' is still considered to pose significant residual risk to residents during a flood event and is not low risk occupation in time of flood, the proposal is not considered to meet the objectives or requirements of Part 7.3 of the LEP.

### **Council's previous legal advice in relation to "good faith" immunity under Section 733 of the Local Government Act - Exemption from liability-flood liable land**

As the proposal by the owners Engineer is to provide a safe refuge through the roof of the shed it was considered that there were similarities with this current application to one which Council approved at 27 Prince Street, Bulahdelah in 2012. Similarly, on that occasion, the application proposed a refuge in place within the building at the PMF level. Council sought legal advice in regards to the "good faith" immunity under Section 733 of the Local Government Act, in relation to granting exemption to Council from liability for approving a development on flood prone land.

Whilst Council staff recommended refusal of the Prince Street dwelling, Council at its meeting of 27 March 2012, resolved to approve the Prince Street development application as follows:

That Council, having due regard to its 2003 Flood Management Plan Process for Bulahdelah, is satisfied with the proposal for the following reasons:

- a) the development is compatible with the flood hazard of the land;
- b) the development will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other developments or properties,
- c) the development incorporates appropriate measures to manage risk to life from flood,
- d) the development will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses,
- e) the development is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.
- f) the development incorporates appropriate measures to manage risk to life and flood

The details of the legal advice sought in the Prince Street Bulahdelah application are available on file for perusal by Council.

#### ***Discussion Regarding Previous Legal Advice***

Immunity under Section 733 of the Local Government Act 1993 may not be assured, therefore it is considered, given the legal advice received by Council on a previous matter, that the subject application cannot be supported by staff.

#### ***Development Control Plan 2014***

The proposal for a refuge in place platform is not considered to meet the following objectives of section 4.2 of the DCP with regards to flooding:

##### Objectives

- The risk of impacts from flooding on people and assets are avoided or otherwise minimised.
- The potential for financial loss or cost to the community as a result of development on flood prone land is limited.

With regards to the controls for new buildings under section 4.2 of the DCP, the subject site does not meet the following vehicular access requirement:

1. Vehicle access to new buildings is to be designed so that ingress and egress from the site is provided above the 2100 1% AEP flood planning level.

In consideration that some of the objectives and a requirement of the DCP have not been met in relation to flooding, it is considered that the proposal should not be supported.

**b) The likely impacts of development including environmental impacts on both natural and built environments and social/economic impacts in the locality**

**Context and Setting**

As the applicant is proposing to utilise a portion of the existing shed as a dwelling it is considered that more effort should be made, by way of treatment to the external façade, so that the portion which is being utilised as a dwelling is more consistent in appearance to that of a residential development within a rural setting. In view of these considerations it is not considered that the proposal is sympathetic to the locality when considering it as a residence.

**Site Design and Internal Layout**

The existing shed does not comply with the current requirements in Councils DCP in terms of setbacks. However, as the shed has existed for many years in its current location it is not considered that the change of use to a portion of the shed will increase the impact on the locality.

**Privacy (Aural and Visual)**

The privacy relationship with the adjoining properties is generally considered to be reasonable.

**Visual Impact**

Should the proposed change of use be given favourable consideration then conditions should be imposed ensuring that the applicant provide Council with an amended plan. It should be required that the amended plan reflects treatment to the external façade of the building so that the building will be more consistent to that of a rural dwelling.

**Access, Transport and Traffic**

Access to the proposed development is from Willow Point Road which is a gravel pavement road spanning between 3 and 5.5m in width. The road is nominally graded by Council twice a year. The driveway into the property is considered appropriate for the subject lots' rural setting. Flood free vehicular access to the site is not provided.

**Utilities**

Discussions with MidCoast Water revealed that the site is connected to the sewer by way of a pumping station. The owner has water tanks on site which are utilised for his water supply. Electricity is also provided to the shed.

**Clarification of Levels Relative to Flood Heights**

A table indicating the comparative 1% AEP Flood Levels and finished floor levels (FFL) are detailed below in order to allow a clearer understanding of the floor level heights relative to flood heights.

| <b>2060 1% AEP Flood level</b> | <b>Ground Floor Level of Shed</b> | <b>Mezzanine Floor Level</b> | <b>Required FFL for 500mm freeboard</b> | <b>Refuge - PMF Flood Level</b> |
|--------------------------------|-----------------------------------|------------------------------|---|---------------------------------|
| RL 3.4m AHD                    | RL 1.96m AHD                      | RL 4.66m AHD                 | RL 3.9m AHD                             | RL6.8 AHD                       |

Safe wading is not available due to the depth and velocities of the water, and although the floor level of the mezzanine is above the 1% flood planning level, the floor level is below the PMF (Probable Maximum Flood).

The owners Engineer has now provided an amended plan detailing that an elevated platform can be constructed above the mezzanine and the roof of the shed extended, to allow a refuge in place area within the shed. The elevated platform is proposed to have a floor level height of 6.8 metres AHD, being the same level as the PMF.

### **Cumulative Impacts**

Approval of the application could possibly set an undesirable precedent for other sites where emergency evacuation, due to flooding, cannot be safely achieved.

It is also considered that approval of the shed as a dwelling could set an undesirable precedent for the area where approval of sheds as dwellings would degrade the visual amenity of the area. It is acknowledged that approval of larger sheds on rural type settings is common; however these sheds are usually located behind a residential dwelling which presents much more positively when viewed from the road.

### **c) The Suitability of the Site for the Development - Flooding**

Following Councils resolution from its meeting of 28 October 2014, where it was resolved that the application be deferred at the applicants request, the applicants Engineer has provided an engineering report in support of the proposal which has been assessed by Councils Investigations Engineer. The comments received from Councils Investigations Engineer are detailed on file, and the following conclusion made:

*"Based upon the above considerations conditions are recommended to be imposed regarding engineering calculations and strengthening requirements if the application is supported; however given significant residual risk to residents during a flood event approval of the application is not supported".*

### **d) Any Submissions Made in Accordance with the Act or Regulations**

The application was originally notified to adjoining owners in accordance with Council's Policy and no submissions were received.

### **e) The Public Interest**

Given the potential risk to residents of the property and emergency services personnel during a 2060 1% AEP flood event it is not considered that the approval of the application would be in the public best interest.

## **CONCLUSION**

This proposal is considered not to be suitable for the site in regard to the possible risk from flooding. The site is located in a high hazard–flood storage area requiring special development considerations, which in this proposal do not meet the minimum requirements. These requirements include the ability to demonstrate permanent fail safe and maintenance free measures to ensure timely, orderly and safe evacuation of people from that area, and to demonstrate that the displacement of these people will not significantly add to the overall cost and community disruption caused by the flood.

The proposal for a 'Refuge in Place' scenario in this instance, where safe evacuation cannot be achieved due to excessive flood depths, is not supported given 'Refuge in Place' is non-compliant with Councils Development Control Plan requirements. It is considered that allowing residents to remain in a roof space area puts unreasonable risk to emergency personnel in a flood situation and as such it is not in the public's best interest to support such an option.

Furthermore in consideration to legal advice received in reference to Councils "good faith" immunity under Section 733 of the Local Government Act 1993 the issues outlined within the report underscore staff inability to support this proposal.

## **RECOMMENDATION**

That the development application for the proposed change of use, to use the mezzanine area of existing shed as a residence, and undertake building alterations to mezzanine on Lot 222 DP 753207, 18 Willow Point Road, Failford be refused on the following grounds:

- 1) The proposed change of use poses an unacceptable risk to the life of the occupants and emergency personnel in an evacuation in the event of a 1% 2060 flood event.
- 2) The proposal will require the Council, the State Emergency Service or other Government agency to increase provision of emergency equipment, personnel, welfare facilities or other resources associated with an evacuation resulting from flooding.
- 3) The proposed change of use is in non-compliance with the requirements and objectives of part 4.2 of Councils Development Control Plan 2014.
- 4) The proposed change in use is in non-compliance with the objectives and requirements of Part 7.3 Flood Planning, of Councils Local Environmental Plan 2014.

**Should Council resolve to approve the application, the following conditions of consent are recommended:**

## **DEFERRED COMMENCEMENT CONDITION**

1. The consent will not operate until evidence, as specified in the following deferred commencement conditions, has been submitted to and approved by the consent authority and written notice given under Section 100(4)(b) of the *Environmental Planning and Assessment Regulation 2000* that the deferred commencement conditions have been satisfied and the date from which the consent operates:

- a) The structural integrity of the flood refuge shall be assured by submission of structural engineering details, including detailed calculations, demonstrating that the entire shed (below and beside) as well as related footings and foundations are capable of withstanding the design conditions imposed by depth and velocity of a Probable Maximum Flood event.

(For these purposes the Probable Maximum Flood depth is estimated to be 4.8m with a velocity of 1.5m/s in an easterly direction).

- b) Submission of amended plan being submitted to Council which reflects treatment to the external façade of the building/shed so that the building will be more consistent in presentation to that of a rural dwelling rather than an industrial building. The amended plan is to also include full details of the refuge in place platform, including elevations, required for the building.

**Reason:** Consistent with best practice for flood risk management for structural adequacy of buildings and life safety.

**Evidence required to satisfy the above deferred commencement conditions must, in accordance with Clause 95(3) of the *Environmental Planning and Assessment Regulation 2000*, be submitted to Council within 6 months of the date of this consent.**

## GENERAL CONDITIONS

### 1. Development in accordance with approved plans

The development must be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

| Plan type/Supporting Document           | Plan No. & version | Prepared by | Dated      |
|---|--------------------|-------------|------------|
| Notification Plan, including elevations | -                  | -           | 03/05/2011 |
| Mezzanine Floor Plan                    | -                  | -           | -          |
| Ground Floor Plan                       | -                  | -           | -          |

The approved plans and supporting documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

**Reason:** Information and to ensure compliance.

### 2. Compliance with Building Code of Australia

All building work must be carried out in accordance with the requirements of the *Building Code of Australia* as in force on the date the application for the relevant construction certificate or complying development certificate was made.

**Reason:** Prescribed condition under the *Environmental Planning & Assessment Regulation 2000*.

### 3. Notification of *Home Building Act 1989* requirements

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- a) in the case of work for which a principal contractor is required to be appointed:
  - i) the name and licence number of the principal contractor, and
  - ii) the name of the insurer by which the work is insured under Part 6 of that Act,
- b) in the case of work to be done by an owner-builder:
  - i) the name of the owner-builder, and
  - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified above becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

**Reason:** Prescribed condition under the *Environmental Planning & Assessment Regulation 2000*.

#### **4. Adjustment to utility services**

All adjustments to existing utility services made necessary by the development are to be undertaken at no cost to Council.

**Reason:** To ensure utility services remain

### **PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

**The following conditions must be complied with prior to the issue of any Construction Certificate:**

#### **5. Flood planning level for new dwellings**

Prior to the issue of a construction certificate, plans and specification detailing the use of flood compatible materials and fixtures in non-habitable areas below the flood planning level must be submitted to and approved by the certifying authority. The flood planning level (minimum habitable floor level) for this development is R.L. **3.9m** A.H.D

**Reason:** To protect the building from flooding in accordance with Council and NSW Government Policy.

#### **6. Construction of buildings in bushfire-prone areas**

Prior to the issue of a construction certificate, plans and specifications detailing the construction of the building, (which includes the entire shed which will now be partially used as a dwelling) to Bushfire Attack Level 19 as defined in *Australian Standard AS 3959-Construction of buildings in bushfire-prone areas and section A3.7 Addendum Appendix 3 of "Planning for Bush Fire Protection"* must be submitted to and approved by the certifying authority.

**Reason:** To ensure the development complies with bush fire construction standards.

#### **7. MidCoast Water approval**

Prior to the issue of a construction certificate, a Certificate of compliance from MidCoast Water, stating that satisfactory arrangements have been made and all payments finalised for the provision of water supply and sewerage to the development, must be submitted to the certifying authority.

**Reason:** To ensure suitable water and sewage disposal is provided to the development.

#### **8. Erosion and sediment control plan**

Prior to the issue of a construction certificate, an erosion and sediment control plan prepared by a suitably qualified person in accordance with *"The Blue Book – Managing Urban Stormwater (MUS): Soils and Construction"* (Landcom) must be submitted to and approved by the certifying authority. Control over discharge of stormwater and containment of run-off and pollutants leaving the site/premises must be undertaken through the installation of erosion control devices including catch drains, energy dissipaters, level spreaders and sediment control devices such as hay bale barriers, filter fences, filter dams, and sedimentation basins.

**Reason:** To protect the environment from the effects of erosion and sedimentation.

## **9. Driveway levels application**

Prior to the issue of a construction certificate, a Driveway Levels Application must be submitted to and approved by Council. A Driveway Levels Application Form must be completed and submitted to Council together with the application fee and all required plans and specifications.

**Reason:** To ensure works within Council's road reserve are constructed to a suitable standard for public safety.

## **PRIOR TO THE COMMENCEMENT OF ANY WORK ASSOCIATED WITH THIS CONSENT**

**The following conditions must be satisfied prior to the commencement of any building construction or subdivision work:**

### **10. Construction certificate required**

Prior to the commencement of any building or subdivision construction work (including excavation), a construction certificate must be issued by a certifying authority.

Enquiries regarding the issue of a construction certificate can be made to Council's Customer Service Centre on 6591 7222.

**Reason:** Statutory requirement under the *Environmental Planning and Assessment Act 1979*.

### **11. Notification of commencement and appointment of principal certifying authority**

Prior to the commencement of any building or subdivision construction work (including excavation), the person having the benefit of the development consent must appoint a principal certifying authority and give at least two (2) days' notice to Council, in writing, of the persons intention to commence construction work.

**Reason:** Statutory requirement under the *Environmental Planning and Assessment Act 1979*.

### **12. Site access**

Public access to the site and building works, materials and equipment on the site is to be restricted, when building work is not in progress or the site is unoccupied. The public safety provisions must be in place prior to the commencement of any demolition, excavation or building works and be maintained throughout construction.

**Reason:** To ensure public health and safety during the construction of the development.

### **13. Toilet facilities - sewerred areas**

Prior to the commencement of work, toilet facilities must be provided at or in the vicinity of the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be a standard flushing toilet connected to a public sewer.

**Reason:** To maintain public health.



#### **14. Site construction sign**

Prior to the commencement of work, a sign or signs must be erected in a prominent position at the frontage to the site:

- 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 work site is prohibited.

The 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.

**Reason:** Prescribed condition under the *Environmental Planning and Assessment Regulation 2000*.

#### **15. Asset Protection Zone (APZ)**

At the commencement of building works and in perpetuity, the property around the dwelling/shed, to a distance of 31 metres, or to the property boundary, whichever is the lesser must be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standard for asset protection zones.

**Reason:** To provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building.

### **CONDITIONS TO BE SATISFIED DURING DEVELOPMENT WORK**

**The following conditions must be complied with during any development work:**

#### **16. Construction times**

Construction and/or demolition works, including deliveries on or to the site must not unreasonably interfere with the amenity of the neighbourhood and must occur only in accordance with the following:

Monday to Friday, from 7 am to 6 pm.

Saturday, from 8 am to 1 pm.

No construction and/or demolition work, including deliveries are to take place on Sundays or Public Holidays.

**Reason:** To maintain amenity during construction of the development.

#### **17. Builders rubbish to be contained on site**

All builders rubbish is to be contained on the site in a suitable waste bin/enclosure. Building materials must be delivered directly onto the property. Footpaths, road reserves and public reserves must be maintained clear of rubbish, building materials and other items at all times.

**Reason:** To ensure that materials and waste do not adversely affect traffic or pedestrian safety and amenity.

## **18. Maintenance of sediment and erosion control measures**

Sediment and erosion control measures must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

**Reason:** To protect the environment from the effects of erosion and sedimentation.

## **PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

**The following conditions must be satisfied prior to any occupation or use of the building:**

### **19. Works to be completed**

The building/structure or part thereof must not be occupied or used until an interim occupation/final occupation certificate has been issued in respect of the building or part.

**Reason:** To ensure compliance with the development consent and statutory requirements.

### **20. BASIX Compliance**

Prior to the issue of a final occupation certificate, all of the required commitments listed in the BASIX certificate must be fulfilled.

**Reason:** Prescribed condition under the *Environmental Planning and Assessment Regulation 2000*.

### **21. Rural house numbering**

Prior to the issue of an occupation certificate the rural address number must be displayed at the main driveway entrance approved for the property, in accordance with the NSW "*Rural Property Address Guidelines*" to ensure prompt identification. The rural address number for this property is 18.

**Reason:** To ensure the site can be identified.

### **22. Fire detection and alarm system required**

Prior to the issue of an occupation certificate, a fire detection and alarm system must be installed and maintained within the building. The system must comply with the Building Code of Australia (BCA) Part 3.7.2.2 requirements for a Class 1a building.

**Reason:** Fire safety.

### **23. Water and Utilities Bushfire Provisions**

In recognition that no reticulated water supply is available to the development, a total of 20,000 litres fire fighting water supply shall be provided for firefighting purposes prior to the issue of an occupation certificate. The fire fighting water supply shall be installed and maintained in the following manner:

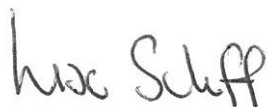
- a) A hardened ground surface for fire fighting truck access is to be constructed up to and within 4 metres of the fire fighting water supply.
- b) New above ground fire fighting water supply storage's are to be manufactured using non-combustible material (concrete, metal, etc.). Where existing fire fighting water supply storage's are constructed of combustible (polycarbonate, plastic, fibreglass, etc.) materials, they shall be shielded from the impact of radiant heat and direct flame contact.
- c) Non-combustible materials (concrete, metal, etc.) will only be used to elevate or raise fire fighting water supply tank(s) above the natural ground level.

- d) A 65mm metal Storz outlet with a gate or ball valve shall be fitted to any above ground fire fighting water supply tank(s) and accessible for a fire fighting truck.
- e) The gate or ball valve, pipes and tank penetration are adequate for the full 50mm inner diameter water flow through the Storz fitting and are constructed of a metal material.
- f) All associated fittings to the fire fighting water supply tank(s) shall be non-combustible.
- g) Any below ground fire fighting water supply tank(s) constructed of combustible (polycarbonate, plastic, fibreglass, etc.) materials shall be shielded from the impact of radiant heat and direct flame contact.
- h) Any fire fighting water supply tank(s) located below ground shall be clearly delineated to prevent vehicles being driven over the tank.
- i) All water supplies for fire fighting purposes shall be clearly signposted as a fire fighting water supply.
- j) Below ground fire fighting water supply tank(s) shall have an access hole measuring a minimum 200mm x 200mm to allow fire fighting trucks to access water direct from the tank.
- k) Fire fighting water supply tank(s) and associated fittings, located within 60 metres of a bushfire hazard and on the hazard side of an approved building, shall be provided with radiant heat shielding to protect the tank from bush fire impacts and maintain safe access to the water supply for fire fighters.
- l) A Static Water Supply (SWS) sign shall be obtained from the local NSW Rural Fire Service (RFS) and positioned for ease of identification by RFS personnel and other users of the SWS. In this regard:
  - i) Markers must be fixed in a suitable location so as to be highly visible; and
  - ii) Markers should be positioned adjacent to the most appropriate access for the water supply.

Note: Below ground dedicated fire fighting water supply tank(s) is defined as that no part of the tanks(s) is to be located above natural ground level.

- m) Electricity and gas services are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

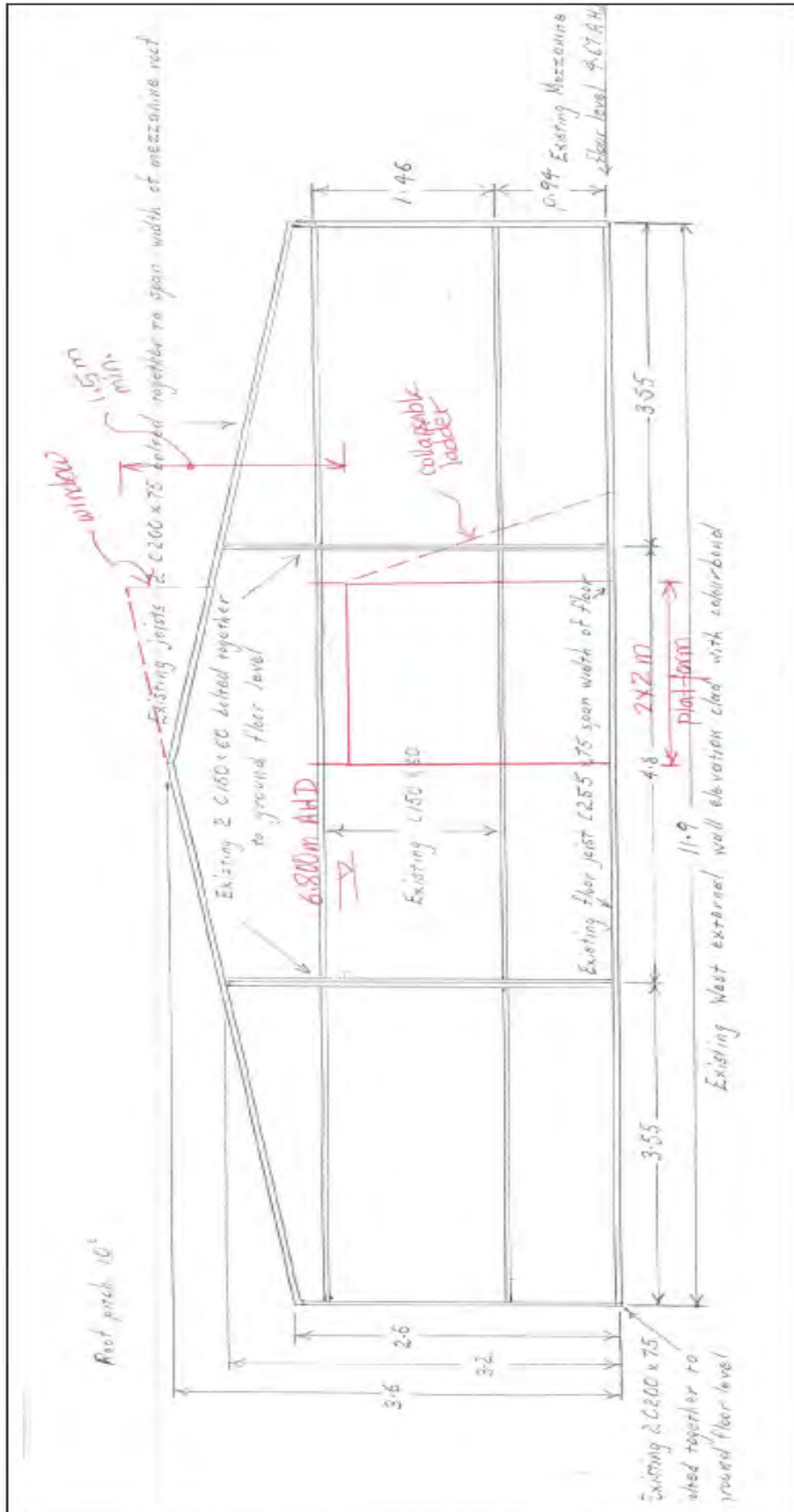
**Reason:** The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.



Lisa Schiff  
**Director**  
**Planning and Natural Systems**

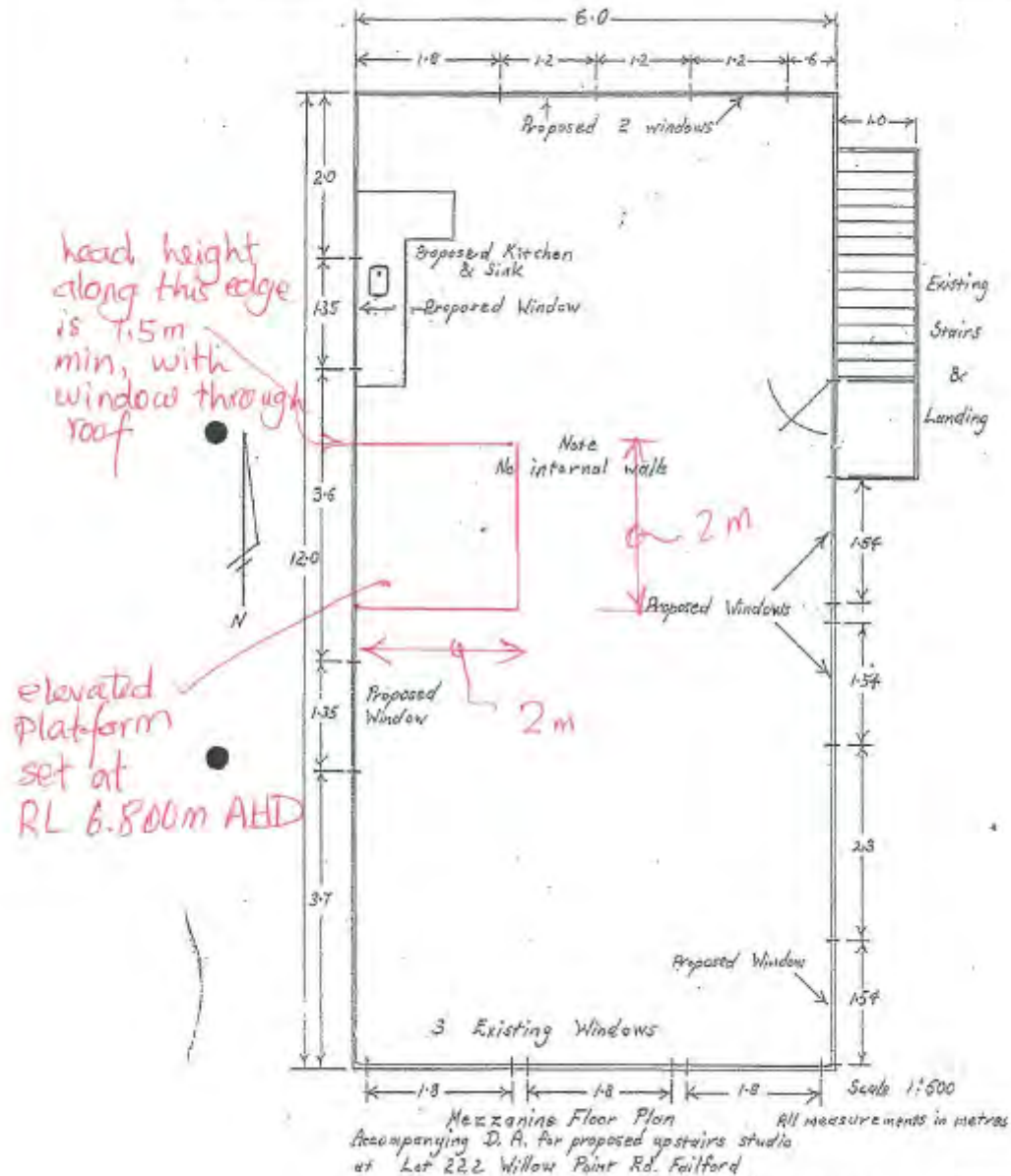
**ANNEXURES**

A: Plans proposed for elevated platform for safe refuge in roof space



D: Mezzanine floor plan

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B: Copy of previous Council Report from meeting on 28 October 2014

**Subject:** PES - DA 574/2011 - Willow Point Rd Failford  
**Index:** DA 574/2011 & PK17612  
**Author:** District Building Surveyor - David Underwood  
**Ordinary Meeting:** 28 October 2014

This item was considered at Council's Ordinary Meeting on 17 April 2012 and was deferred until Council's Revised Flood Policy was in place.  
The report is now presented for consideration.

**DETAILS:**

|                               |   |                                 |
|-------------------------------|---|---------------------------------|
| Date Received:                | 22 June 2011                                      |                                 |
| Date Council deferred matter: | 17 April 2012                                     |                                 |
| Applicant:                    | Mr Brian Skelton                                  |                                 |
| Owner:                        | Mr Brian Skelton                                  |                                 |
| Land:                         | Lot 222 DP 753207, 18 Willow Point Road, Failford |                                 |
|                               | Area:   | 1.583 Hectares                  |
|                               | Property Key:                                     | 17612                           |
|                               | Zoning:   | RU2 Rural Landscape, GLLEP 2014 |

**SUMMARY OF REPORT:**

On 17 April 2012, Development Application No. 574/2011 was considered by Council. It was resolved to defer the development application for the proposed change of use from an existing shed to a residence and undertake building alterations to mezzanine, until Council's Revised Flood Policy is in place.

Following lengthy delays with finalising Council's Flood Policy revision, comments were received from Council's Investigations Engineer on 19 August 2014, where it was recommended that the current proposal be refused.

**SUMMARY OF RECOMMENDATION:**

That the development application for the proposed change of use, to use the mezzanine area of existing shed as a residence, and undertake building alterations to mezzanine on Lot 222 DP 753207, 18 Willow Point Road, Failford be refused on the following grounds:

- 1) The proposed change of use poses an unacceptable risk to the life of the occupants and emergency personnel in an evacuation in the event of a 1% flood event.
- 2) The proposal will require the Council, the State Emergency Service or other Government agency to increase provision of emergency equipment, personnel, welfare facilities or other resources associated with an evacuation resulting from flooding.
- 3) That safe evacuation cannot be achieved should a 2060 1% AEP flood event occur.
- 4) A Refuge-in-Place option cannot be achieved using the proposed finished floor level of the mezzanine area which is some 2.14metres below the 2100 PMF Level of RL 6.8m AHD.

**FINANCIAL/RESOURCE IMPLICATIONS:**

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court with inherent cost implications.

**POLICY IMPLICATIONS:**

Council's current Flood Management Policy is applicable. Council's Investigations Engineer has considered and provided comments that will be addressed further in this report.

**LEGAL IMPLICATIONS:**

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court.

**LIST OF ANNEXURES:**

Nil.

**LIST OF ATTACHMENTS:**

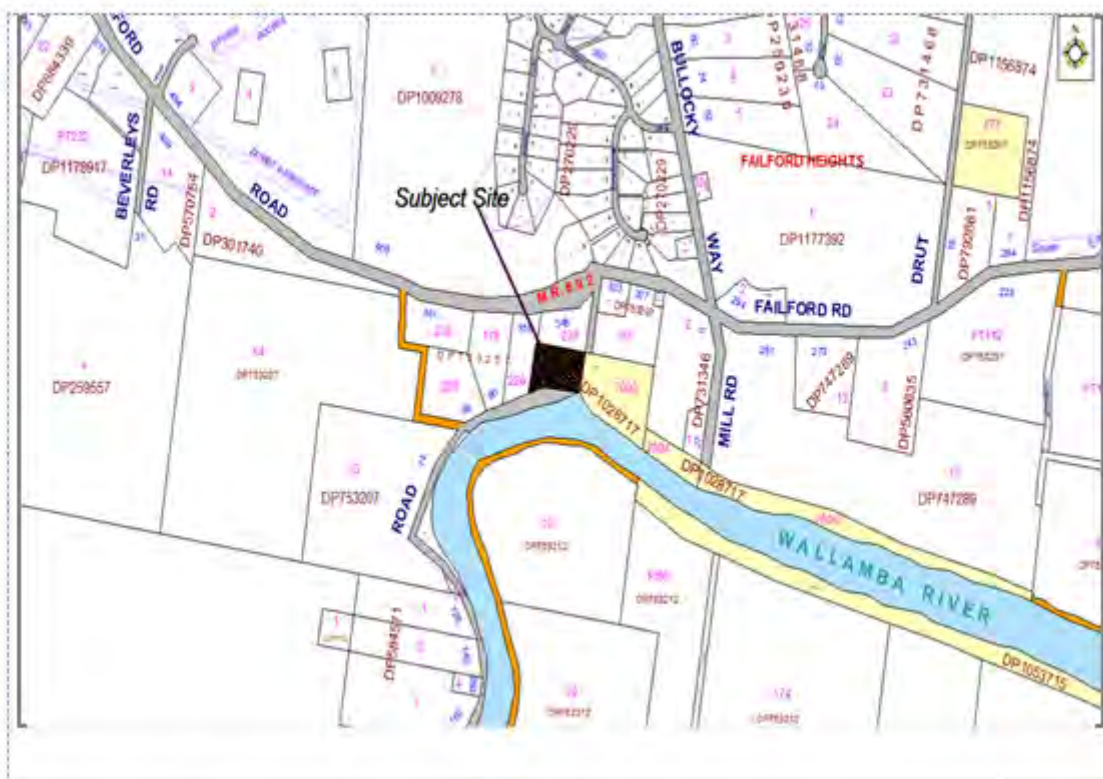
A: Previous Council Report from meeting on 17 April 2012.

Due to its large size, Attachment A has been circulated in hard copy to Councillors and Senior Staff only as a paper conservation measure. However, this Attachment is publicly available on Council's Website, copies are available at Council offices and copies are available on request.

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## SUBJECT SITE AND LOCALITY:



## BACKGROUND:

- The subject development application was considered by Council at its meeting held on 17 April 2012, where it was resolved to defer the matter as follows:

*"That Development Application 574/2011, for the proposed change of use to use the mezzanine area of existing shed as a residence and undertake building alterations to mezzanine on Lot 222 DP 753207, 18 Willow Point Road, Failford be deferred until Council's Revised Flood Policy is in place."*

- 19 August 2014, comments received from Council's Investigations Engineer recommending refusal of the application as the mezzanine floor cannot be relied upon as a refuge during a significant flood event.

## PROPOSAL:

The applicant proposes to occupy a 72.0m<sup>2</sup> mezzanine area of the existing shed. It is proposed to enclose the mezzanine area to make a formal kitchen and combined living/dining and bedroom area. The applicant also proposes to utilise the existing ground floor bathroom facilities. The remaining ground floor area of the shed will be utilised for storage and garaging.

## SITE DESCRIPTION:

The subject site is located off Willow Point Road, opposite the Wallamba River at Failford. The site is low-lying and is thickly vegetated with Casuarina along the northern and eastern portions of the site. The shed has a minimal setback from Willow Point Road and is located approximately 30.0m from the Wallamba River.



The existing Colorbond machinery shed has dimensions of 24m x 12m in area and is 6.5m high at the ridge. A 72.0m<sup>2</sup> mezzanine floor exists at the western end of the building. A toilet and shower have been installed in the north-western corner of the building on the ground floor and are connected to a pump system which in turn is connected to MidCoast Water's sewer main.

## REPORT:

### ***The Suitability of the Site for the Development - Flooding***

Following the development application being deferred at the Council Meeting on 17 April 2012, consultation was undertaken with Council's Investigations Engineer with regard to clarification and comment once the revised flood study was in place. Council's Investigations Engineer confirmed that the Flood Policy was now being addressed as part of General DCP 2014 provisions.

Revision of flood provisions is being undertaken by a working group consisting of internal stakeholders. Completion of this process including Council adoption is expected in February 2015. In the interim further comment was sought from Council's Investigation Engineer in order that the development application might now be determined. The following comments have been made:

***It is expected that a 'refuge-in-place' option will be available within DCP provisions for certain circumstances in which the effective risk context is considered reasonable. The appropriate standard for a flood refuge area within a building is the Probable Maximum Flood or PMF. The PMF is adopted as the flood refuge standard because it provides good confidence that the building will survive and continue to give refuge post-flood. The PMF standard directly addresses the real potential for structural failure and loss of life as evidenced in the SE Queensland Floods of 2010-11.***

***Safe evacuation in accordance with Councils Flood Policy cannot be assured given the depth and velocity of floodwaters at this locality. A refuge-in-place option could only be adopted if the refuge floor level was at the 2100 PMF Level of RL 6.8m AHD. Ground level is RL 1.9m AHD (+/-) and the mezzanine is currently set at RL 4.66m AHD which would be some 2.14m below the 2100 PMF Flood Level. Considering the current proposal we are obliged to recommend refusal.***

It should be noted that the engineers comments above are summarised with a copy of the full report/comment being located on file for perusal of councillors if required.

### **Clarification of Levels Relative to Flood Heights**

A table indicating the comparative 1% AEP Flood Levels and finished floor levels (FFL) are detailed below in order to allow a clearer understanding of the floor level heights relative to flood heights.

| <b>2060 1% AEP Flood level</b> | <b>Ground Floor Level of Shed</b> | <b>Mezzanine Floor Level</b> | <b>Required FFL for 500mm freeboard</b> | <b>Refuge - PMF Flood Level</b> |
|--------------------------------|-----------------------------------|------------------------------|---|---------------------------------|
| RL 3.4m AHD                    | RL 1.96m AHD                      | RL 4.66m AHD                 | RL 3.9m AHD                             | RL6.8 AHD                       |

In view of the levels as detailed above, safe wading is not available due to the depth and velocities of the water, nor is safe refuge in the mezzanine achieved given the insufficient floor level height.

### ***Cumulative Impacts & Precedent***

Approval of the application could possibly set an undesirable precedent for other sites where emergency evacuation, due to flooding, cannot be safely achieved.

***The Public Interest***

Given the potential risk to residents of the property and emergency services personnel during a 2060 1% AEP flood event, it is not considered that the approval of the application would be in the public's best interest.

**CONCLUSION:**

Following the deferred resolution from Council's meeting in April 2012, the development application was held pending the finalisation of Council's Revised Flood Policy. As Council's Investigations Engineer confirmed that the DCP Flood Provisions are ongoing, final comments were provided so that the development application might be determined. As Council's Investigations Engineer recommended refusal, given that a refuge-in-place option could not be achieved within the proposed mezzanine area, it is therefore considered that the subject development application should be refused.

**RECOMMENDATION:**

It is recommended that Development Application 574/2011, for the proposed change of use to use the mezzanine area of existing shed as a residence and undertake building alterations to mezzanine on Lot 222 DP 753207, 18 Willow Point Road, Failford, be refused on the following grounds:

- 1) The proposed change of use poses an unacceptable risk to the life of the occupants and emergency personnel in an evacuation in the event of a 1% flood event.
- 2) The proposal will require the Council, the State Emergency Service or other Government agency to increase provision of emergency equipment, personnel, welfare facilities or other resources associated with an evacuation resulting from flooding.
- 3) That safe evacuation cannot be achieved should a 2060 1% AEP flood event occur.
- 4) A Refuge-in-Place option cannot be achieved using the proposed finished floor level of the mezzanine area which is some 2.14 metres below the 2100 PMF Level of RL 6.8m AHD.

C: Copy of previous Council Report from meeting on 17 April 2012

**Subject:** PES - DA 574/2011 - Proposed Change of Use of Mezzanine Area and Shed  
**Index:** DA 574/2011; PK 17612  
**Author:** District Building Surveyor - David Underwood  
**Ordinary Meeting:** 17 April 2012

This item was considered at Council's Development Control Unit meeting on 1 March 2012 and was referred to Full Council meeting of 17 April 2012 at the request of the applicant.

The report is now presented for consideration.

**DETAILS:**

Date Received: 22 June 2011  
Applicant/  
Owner: Mr Brian Skelton  
Land: Lot 222 DP 753207, 18 Willow Point Road, Failford  
Area: 1.583 Hectares  
Property Key: 17612  
Zoning: 1a - Rural under, Great Lakes LEP 1996

**SUMMARY OF REPORT:**

- The applicant proposes to convert the mezzanine area of an existing shed into a residence.
- The site is subject to severe flooding.
- The floor level of the mezzanine is 4.67m AHD which is 1.37m above the 1% Flood level of 3.3m AHD.
- The ground floor level of the shed is at RL 1.96m AHD which poses issues with regard to evacuation.
- The subject development is refused given that safe evacuation cannot be achieved.

**SUMMARY OF RECOMMENDATION:**

That the development application for the proposed change of use, to use the mezzanine area of existing shed as a residence, and undertake building alterations to mezzanine on Lot 222 DP 753207, 18 Willow Point Road, Failford be refused on the grounds that safe evacuation cannot be achieved should a 2060 1% AEP flood event occur.

**FINANCIAL/RESOURCE IMPLICATIONS:**

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court with inherent cost implications.

**POLICY IMPLICATIONS:**

Nil.

**LEGAL IMPLICATIONS:**

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court.

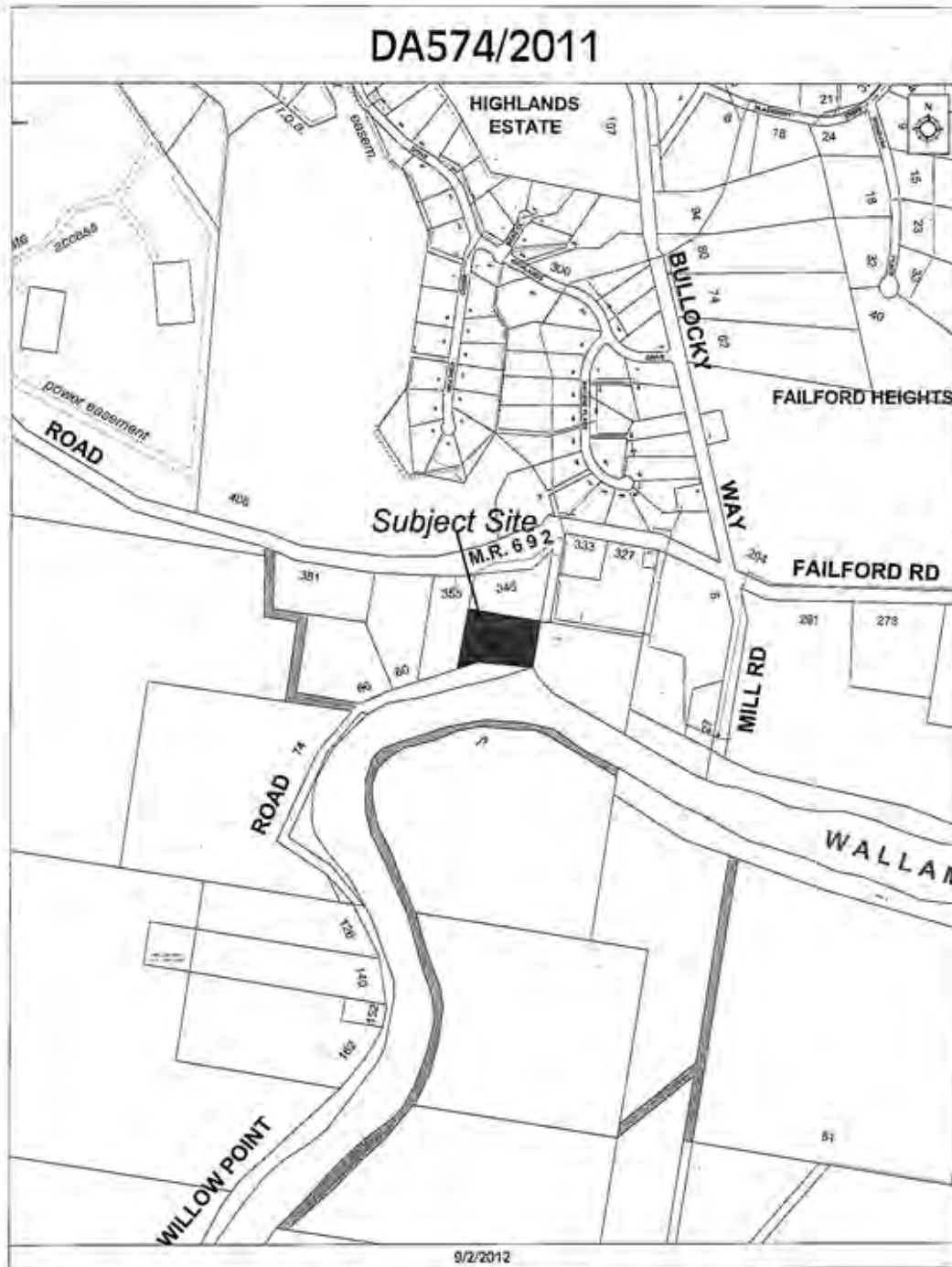
**LIST OF ANNEXURES:**

- A: Site Plan with AHD floor level of existing machinery shed
  - B: Elevations
  - C: Ground floor plan of shed
  - D: Mezzanine floor plan
- 

**LIST OF ATTACHMENTS:**

Nil.

**SUBJECT SITE AND LOCALITY:**



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## **BACKGROUND:**

- 22 June 2011 - Development application received.
- 6 July 2011 - Site inspection undertaken.
- 14 July 2011 - Development application referred to internal departments for comment.
- 18 July 2011 - Plans neighbour notified.
- 20 July 2011 - Letter sent to applicant requesting further information.
- 2 August 2011 - Received comments from internal departments regarding flooding.
- 24 August 2011 - Received an e-mail from applicant requesting a time extension to obtain information requested by Council.
- 21 September 2011 - Applicant responds to Council's letter regarding additional information.
- 30 September 2011 - Carried out a site inspection following submission of additional details with regard to bushfire assessment.

## **PROPOSAL:**

The applicant proposes to occupy a 72.0m<sup>2</sup> mezzanine area of the existing shed. It is proposed to enclose the mezzanine area to make a formal kitchen and combined living/dining and bedroom area. The applicant also proposes to utilise the existing ground floor bathroom facilities. The remaining ground floor area of the shed will be utilised for storage and garaging.

## **SITE DESCRIPTION:**

The subject site is located off Willow Point Road, opposite the Wallamba River at Failford. The subject site is low-lying and is thickly vegetated with Casuarina along the northern and eastern portions of the site. The shed has a minimal setback from Willow Point Road and is located approximately 30.0m from the Wallamba River.

The existing Colorbond machinery shed has dimensions of 24m x 12m in area and is 6.5m high at the ridge. A 72.0m<sup>2</sup> mezzanine floor exists at the western end of the building. A toilet and shower have been installed in the north-western corner of the building on the ground floor, and are connected to a pump system which in turn is connected to MidCoast Water's sewer main.

## **REPORT:**

The following matters listed under Section 79C of the Environmental Planning and Assessment Act, 1979, are relevant in considering this application:

***The provisions of any environmental planning instrument; any draft environmental planning instrument that is or was on public exhibition and which have been notified to the consent authority; any DCP; any matters prescribed by the regulations, any coastal zone management plan that apply to the Development Application on the subject land***

### ***Great Lakes Local Environmental Plan 1996 (GLLEP 1996)***

The subject site is zoned 1(a) Rural under the provisions of Great Lakes LEP 1996. Clause 19 of Great Lakes LEP 1996 "Dwelling Houses in Zones 1(a), 7(a1) and 7(b)" identifies the circumstances where dwelling houses maybe erected on land within the zone. The subject site comprises the whole of an existing holding under the provisions of clause 19 and as such, the erection of a dwelling house on the subject land is permissible with Council's consent.

In addition to this, clause 25 of Great Lakes LEP 1996 "Waterways" is also applicable as the site is affected by the predicated 2060 1% AEP flood event. Specifically, the relevant subclause of clause 25 state that:

*"Despite any other provision of this plan, a person must not erect a building or carry out a work (other than buildings or works which, in the opinion of the Council, are unlikely to significantly affect flood behaviour) on flood-liable land without the consent of the Council.*

*The Council must not consent to the erection of a building or the carrying out of a work on flood-liable land unless the provisions of the Council's Flood Management Policy that relate to the proposed development have been taken into consideration. Copies of the Flood Management Policy are available for inspection at the Council's Office.*

*The Council may refuse consent to an application to carry out any development which in its opinion will significantly:*

- (a) adversely affect flood behaviour, including the flood peak at any point upstream or downstream of the proposed development and the flow of floodwater on adjoining lands, or*
- (b) increase the flood hazard or flood damage to property, or*
- (c) cause erosion, siltation or destruction of riverbank vegetation in the locality, or*
- (d) affect the water table on any adjoining land, or*
- (e) affect riverbank stability, or*
- (f) affect the safety of the proposed development in time of flood, or*
- (g) restrict the capacity of the floodway, or*
- (h) require the Council, the State Emergency Service or any other Government agency to increase its provision of emergency equipment, personnel, welfare facilities or other resources associated with an evacuation resulting from flooding, or*
- (i) increase the risk to life and personal safety of emergency services and rescue personnel".*

#### **Development Control Plan No. 46**

Great Lakes Council's Development Control Plan No. 46, specifies requirements for development located in Rural, Rural Residential and Environmentally Sensitive Lands. The proposed development is in non compliance with the Development Control Plan as set out below;

- *A minimum 18m setback applies to the primary road front for rural, rural residential land environmentally sensitive land.*
- *A minimum 10m setback applies to all side and rear property boundaries for rural and environmentally sensitive land.*
- *A setback of 40m is generally recommended to any permanent or intermittent waterway. To determine if the waterway on or near your property is classified as permanent or intermittent in nature, you must refer to the topographical maps held at Council.*

The exiting shed does not comply with the requirements of the DCP; however, the DCP was not in force at the time the shed was approved.

#### **Council Flood Management Policy**

Councils Flood Management Policy specifies that where applications for developments on flood prone land are submitted, Council requires the applicant to satisfactorily demonstrate that:

- (a) *the development will not increase the flood hazard or flood damage to other properties, or adversely affect them in any way during times of floods. A detailed report from a competent consultant will be required to support the application;*
- (b) *permanent, fail-safe, maintenance free measures are incorporated in the development to ensure the timely, orderly and safe evacuation of people from that area, should a flood occur. In addition, it must also be demonstrated that the displacement of these people during times of flood will not significantly add to the overall cost and community disruption caused by the flood. A detailed report from a competent and experienced consultant will generally be required in support of such a development application.*

As failsafe measures have not been provided from the applicant in relation to an orderly and safe evacuation of residents it is not considered that the approval of the proposal will be in accordance with Councils Flood Management Policy.

***The likely impacts of development including environmental impacts on both natural and built environments and social/economic impacts in the locality***

***Context and Setting***

As the applicant is proposing to utilise a portion of the existing shed as a dwelling it is considered that more effort should be made, by way of treatment to the external façade, so that the portion which is being utilised as a dwelling is more consistent in appearance to that of a residential development within a rural setting. In view of these considerations it is not considered that the proposal is sympathetic to the locality when considering it as a residence.

***Site Design and Internal Layout***

As previously mentioned the existing shed does not comply with the current requirements in Councils DCP No. 46 in terms of setbacks. However, as the shed has been approved for quite sometime, prior to the current DCP provisions, it is not considered that the change of use to a portion of the shed will increase the impact on the locality.

***Views***

There are no unreasonable impacts on views or outlooks.

***Privacy (Aural and Visual)***

The privacy relationship with the adjoining properties is generally considered to be reasonable.

***Visual Impact***

Should the proposed change of use be given favourable consideration then conditions should be imposed ensuring that the applicant provide Council with an amended plan. It should be required that the amended plan reflects treatment to the external façade of the building so that the building will be more consistent to that of a rural dwelling.

***Access, Transport and Traffic***

The application was referred to Council's Transport Assets Section who have commented as follows:

***Access:***

*Access to the proposed development is from Willow Point Road which is a gravel pavement road spanning between 3 and 5.5m in width. The road is nominally graded by Council twice a year. The driveway into the property is considered appropriate for the subject lots' rural setting.*

***Flooding/Climate Change:***

*The subject lot is affected by the projected 2060 1% AEP flood level of R.L 3.3m AHD. Given the floor level of the existing shed at R.L 1.96m this would mean that in a predicted*



2060 1% AEP flood event there would be 1.34m of water passing through the shed at velocity and over the shed floor. Details for velocities at this point of the river system are at this stage unknown to Council. However, given the location of the subject lot, it is fair to say that velocities during the predicted 2060 1% AEP flood event would be quite considerable and not of a minor/slower nature. Councils' investigation engineer Geoff Love, has advised me that there are warning device gauges further upstream from the subject lot that alert authorities and the SES once dangerous levels are reached and pro active responses are then required to evacuate residents within low lying flood prone areas. Furthermore, the duration to reach peak flood levels would be obtained within 24 – 30 hrs. However, through consultation with Andrew Blatch (Councils' Engineering Executive Coordinator) I have been informed that the local SES will only respond to a request for assistance if contacted by the resident and therefore do not have a site specific plan of management in place for evacuation purposes. Given the contour levels (provided by councils' mapping system) surrounding the existing shed, it is apparent that access and egress to and from the subject lot will become difficult and dangerous as flood waters rise. Willow Point Road it self (to the north eastern side of the subject lot) will become impassable with flood waters potentially reaching 2.3m – 2.8m over the existing road level.

#### **Transport Assets Recommendation**

*This application is refused on the grounds that safe evacuation can not be achieved should a 2060 1% AEP flood event occur.*

#### **Utilities**

Discussions with MidCoast Water revealed that the site is connected to the sewer by way of a pumping station. The owner has water tanks on the site which are utilised for his water supply. Electricity is also provided to the shed.

#### **Drainage**

There is a natural watercourse on the site which would allow for disposal of stormwater, subject to suitable provision being made to ensure that there are no impacts from the stormwater disposal, such as erosion and sediment issues.

#### **Flora and Fauna**

There is minimal impact on flora and fauna as a result of the development.

#### **Cumulative Impacts**

Approval of the application will certainly set an undesirable precedent for other sites where emergency evacuation, due to flooding, cannot be safely achieved.

#### **The Suitability of Site for the Development**

The subject site is not considered to be suited to the proposed development. Whilst the floor level of the habitable area, being the mezzanine, is 500mm above the predicted 2060 1% flood level, the site itself and ground floor of the development will be well below this level. During the 2060 1% flood event severe risk would be placed on any occupants of the building, if approved, and vehicular access to the site would be impossible. These constraints effectively prohibit the occupation of the existing shed as a dwelling. It is also likely that emergency personnel would be placed at risk if required to evacuate residents from the building.

#### **Any Submissions Made in Accordance with the Act or Regulations**

The application was notified to adjoining owners in accordance with Council's Policy and no submissions were received.

#### **The Public Interest**

Given the potential risk to residents of the property and emergency services personnel during a 2060 1% AEP flood event it is not considered that the approval of the application would be in the public's best interest.

**CONCLUSION:**

The applicant proposes to convert a portion of the existing colorbond shed into a residential dwelling. During the 2060 1% AEP flood event there is a predicted 1.34m of water passing through the shed at velocity over the shed floor. As a result there would be severe risk placed on any occupants of the building, if approved. In addition vehicular access to the site would not be possible during a 1% flood event. As such the proposal does not comply with Council's Flood Management Policy. The proposal is also considered to be contrary to clause 25 of Great Lakes LEP 1996 "Waterways" and is considered to endanger both the lives of potential residents and rescue personnel. After consideration of the above, the proposal is not supported.

**RECOMMENDATION:**

It is recommended that Development Application 574/2011, for the proposed change of use to use the mezzanine area of existing shed as a residence and undertake building alterations to mezzanine on Lot 222 DP 753207, 18 Willow Point Road, Failford, be refused on the following grounds:

- 1) The proposal is contrary to clause 25 of Great Lakes Local Environmental Plan 1996.
- 2) The proposal does not comply with Council's Flood Management Policy.
- 3) That safe evacuation cannot be achieved should a 2060 1% AEP flood event occur.
- 4) The proposal will require the Council, the State Emergency Service or any other Government agency to increase its provision of emergency equipment, personnel, welfare facilities or other resources associated with an evacuation resulting from flooding.
- 5) The proposal will increase the risk to life and personal safety of emergency rescue personnel.