

11 December 2024

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**Attention: Chris Eldred**

Dear Sir / Madam

**Tweed Shire Council Submission – Winchelsea Way, Terranora Mod (DA242-10-2004 - Mod 2)**

I refer to the Department's request for Council's advice / comment on the proponent's proposed modification of the Winchelsea Way rural residential subdivision at Terranora (DA242-10-2004 – Mod 2). Council officers have undertaken a review of the documentation associated with the Modification and provide the following comments for the Department's consideration.

**1. Ecology**

**1.1 Survey for Rusty Plum**

It is considered appropriate that the applicant be requested to provide the survey method, location and time of effort spent during targeted field survey for *Niemeyera whitei* (Rusty Plum) to verify specimens are no longer present.

**1.2 Vegetation impact**

The current consent authorises the removal of 15 x Melaleuca trees and a number of Camphor Laurel only to enable construction of the road and associated earthworks (**Condition A2 and B9**). The *State Significant Development Modification Report* dated October 2024 prepared by Newton Denny Chapelle does not appear to specifically identify that changes to the extent of authorised vegetation removal are sought through the modification application, other than that related to Rusty Plum and Long-leaved Tuckerroo.

Despite the previous consent conditions relating to the extent of vegetation removal authorised, the letter dated 06 February 2024 prepared by Biodiversity Australia at Section 2.3 accompanying the modification applications appears to incorrectly states that:

*“As the current DA assumes complete loss of vegetation within the new lots (with the exception of threatened species and the Dam), the adjustment to the current lot layout will have minimal ecological impacts”.*

Furthermore, the letter prepared by Biodiversity Australia within Section 2.3 is considered to overlook the following potential biodiversity impacts with respect to the modification:

- The proposed common boundary between Lot 10 and Lot 11 is aligned through a copse or remnant vegetation dominated by *Melaleuca quinquenervia* (Broad-leaved Paperbark). In accordance with current consent conditions the *Melaleuca* trees are understood to be retained in situ (**Condition B8**); and
- The proposed southern boundary of Lot 11 appears to be aligned through the remnant *Cassia marksiana* (Mark's Cassia) specimen. The Mark's Cassia is to be afforded long term protection (with 15m radius earthworks or construction exclusion zone – **Condition E10**) and provided with a vegetated buffer (**Condition B8**).

The location of the Mark's Cassia referenced in Section 2.3 of the letter appears incorrect stating '*...(t)he Cassia marksiana will now fall within a lot (proposed Lot 10, Figure 3)*'. The position of Mark's Cassia has not been identified on Figure 3 of the letter (assumed to be the proposed subdivision plan – not captioned).

To afford protection to the copse of Broad-leaved Paperbark and Mark's Cassia (should the modification be approved), **Council recommends that the following amendments to the layout and/or conditions be imposed:**

- a. The proposed common boundary should either be reconfigured to avoid fragmenting the remnant copse of Broad-leaved Paperbark or alternatively a stand-alone new condition should be imposed affording formal statutory protection of the vegetation under an 88B instrument. Details of boundary fencing should be provided. It is noted that the *Vegetation Management Plan* (VMP) Rev. 1.1 dated 23/07/2024 prepared by Biodiversity Australian accompanying the modification application, whilst considered to require amendment (see comments in Item 1.4 below), shows retention of the remnant Broad-leaved Paperbark copse, identified as 'Melaleuca patch to be retained' on Figure 5 of the VMP;
- b. The copse of Broad-leaved Paperbark should be identified through a tree survey using survey grade equipment, plotted on the proposed Lot layout plan and assigned 'to be retained';
- c. The proposed southern boundary of Lot 11 should be reconfigured to avoid the Mark's Cassia and associated vegetated buffer (as required by current **Condition B8**);
- d. The Mark's Cassia should be identified through a tree survey using survey grade equipment, plotted on the proposed Lot layout plan and assigned 'to be retained and protected'; and
- e. To make clear that vegetation removal is limited to those trees currently identified to enable construction of the road and associated earthworks being 15 x Broad-leaved Paperbark and Camphor Laurel, it is recommended all other trees occurring at the time of issue of the consent within the development envelope are identified through a tree survey using survey grade equipment, plotted on the proposed Lot layout plan and assigned 'to be retained' during the construction phase. It is noted this could be addressed in an amended VMP.

Note: From previous site inspections it was noted that the 15 x Broad-leaved Paperbark approved for removal and a number of Camphor Laurel have already been removed and are no longer present.

### 1.3 Bushfire assessment

It is recommended that the *Bushfire Hazard Assessment* dated 02/10/2024 prepared by Geolink be amended as follows:

- a. Recognise all trees identified to be retained pursuant to Item 1.2 above and consistent with the existing consent conditions, with the exception of Rusty Plum and Long-leaved Tuckeroo, and account for tree retention as part of the bushfire risk assessment;
- b. Recognise the vegetated buffer requirements to be addressed under an approved VMP consistent with conditions of consent, with the exception of Rusty Plum and Long-leaved Tuckeroo, and account for vegetation buffering and associated planting as part of the bushfire risk assessment;
- c. Remove the following statement as it is considered inconsistent with the consent, further noting that no specific ecological impact assessment to enable additional tree removal has been included as part of the modification application.

*“The trees around the existing dwelling in the north-west corner of the site are identified as ‘woody weeds and herbs’ in the Vegetation Management Plan (Biodiversity Australia, 2023) and will be removed in accordance with this plan. The existing Melaleuca quinquenervia trees in proposed Lot 10 are to be removed”.*

- d. Remove the Asset Protection Zone (APZ) shown on Illustration 4.1 where occurring within the Mark’s Cassia vegetated buffer as required by conditions of consent. Establishment and maintenance of APZ’s should not compromise threatened species management outcomes.

### 1.4 Vegetation Management Plan

The submitted *Vegetation Management Plan* (VMP) Rev. 1.1 dated 23/07/2024 prepared by Biodiversity Australian is considered to require substantial amendment to accord with the conditions of consent and align with proposed modifications. Council recommends that the VMP in its current form should not be approved as part of the modification application unless changes are made to the document to achieve the expected objectives of the plan and successful delivery of habitat protection and restoration commitments.

Note: Council is in the process of assessing a VMP to satisfy **Condition B9** under a current Subdivision Works Certificate (CC24/0041). Council has issued two Requests for Information to amend the VMP. A response to the latest Request for Information has not yet been received. A copy of Council’s Information Requests in relation to the VMP may be readily provided upon request.

## 2. Development Engineering

### 2.1 Reduced Road Width

The proposed **reduced road width is not supported**.

Council's Subdivision Manual DCP A5 currently states:

*The design guidelines and development standards for community title infrastructure are generally the same as those for conventional subdivisions, except that Council will may consider proposals that justify departure from standards for road and verge widths. Standards for street and lot layout are the same as for conventional subdivisions.*

However, due to the recent 'Iron Gates' LEC decision that directed Council to accept a private Community Title road as public road, Council must now be less flexible with variations previously accorded to Community Title roads – in the event that dedication to Council is proposed in the future. In that regard, standard road verges (including footpath areas) must be included as part of the 'Lot 1' road to contain all services.

As such, the road must be constructed to the same standards as for regular Torrens Title subdivisions, although if the applicant seeks to negotiate, there may be some flexibility applied to the footpath width on one side of the road (only).

In this regard, Council requires the road to have a **minimum carriageway width of 6m plus footpath verges of 3.5m width: total road width to be a minimum 13m** (not 6m as proposed).

It is not considered appropriate for the proponent to apply RFS road requirements to subdivision at the detriment of other considerations.

### 2.2 Bus Bay

The existing approval imposes a requirement for a bus bay on Terranora Road. Given that a bus bay is not shown on the submitted plans, it is considered appropriate that the proponent provide the design detail of the bus bay to demonstrate that there is sufficient room within the road reserve to cater for the bus bay as required by **Condition B7(3)** or amend the subdivision accordingly.

### 2.3 Access

Similar to Item 2.2 above, the proponent should amend the subdivision layout to provide for the splay corner on Lot 2, as required by **Condition B7(4)**.

### 2.4 Service Provisions

It is considered appropriate that existing consent **Conditions B10(6) and E4 be amended** to better cover service provisioning requirements as follows (amendments shown in bold or struck through):

- **B10(6)**

Underground reticulated electricity and telephone cables are to be installed to service each lot in the subdivision to the satisfaction of ~~Country Energy~~ **the relevant service authority**.

- **E4**

Works for roads, drainage, sewer, water, lighting, **electricity, telecommunications** and concrete footpaths are to be completed or other satisfactory arrangements for their completion are to be made with Council prior to release of the Subdivision Certificate.

### 3. **Stormwater**

Retention of the existing dam raises geotechnical concerns regarding its stability. It is recommended that **Condition B4 be amended** by adding the following:

- (h) A geotechnical assessment of the existing dam (being retained) is required to investigate dam wall stability and to ensure downstream properties and potential future development will not be affected by dam failure and flooding.

### 4. **Traffic**

A review of the *Bitzios Consulting Traffic letter* dated 5 February 2024 has been undertaken. Given the reduction in speed limit on Terranora Road, there are no objections to the proposed amendments to **Condition B7**, as noted below:

- Modify Condition B7(2)(a)/(b) with “*provision of a CHR and AUL(s) treatments at the intersection in accordance with Austroads Guide to Road Design Part 4*”.
- Modify Condition B7(2) to include after sub-clause (f) “*More prominent intersection approach warning signage (eastbound approach) and improvements to the grades on Winchelsea Way at the intersection up to 6 metres back from the give-way line should be incorporated into the proposed intersection design.*”

### 5. **Environmental Health**

#### 5.1 **Amenity**

Whilst the proposed modification is not considered to warrant any new amenity conditions, it is recommended that **Conditions D5 (Hours of Work), D6 (Construction Noise Objective) and AN5 (Noise Generation) be updated** to reflect contemporary versions of these conditions. The following wording for updated conditions is recommended:

- **Site Management**

The operation of the premises including any machinery, plant, and processes must not cause emissions contrary to the *Protection of the Environment Operations Act 1997*.

- **Hours of Work**

Site work (including the switching on and operation of plant, machinery, and vehicles) must only be carried out between the following times -

For any **works** from 7.00 am to 6.00 pm on Monday to Friday.

For any **works** from 8.00 am to 1.00 pm on Saturday.

Site work is not to be carried out outside of these times except where there is an emergency, or for urgent work directed by a police officer, public authority or as otherwise approved by Council's General Manager or delegate.

No noise is to impact the amenity or disturb surrounding residents outside of these times.

The principal contractor is responsible to instruct and control subcontractors regarding hours of work.

- **Noise and vibration requirements**

The development shall be carried out in accordance with current NSW Environment Protection Authority construction noise guidelines. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment during demolition and construction works.

## 5.2 Waste – including spoil (VENM + ENM)

It is noted that the current consent includes the following conditions relating to waste during subdivision works: **B2 (Earthworks – Fill requirements); C5 (Construction Waste Management Plan); and D10 (Building Waste Management).**

Whilst it is considered that waste generation will unlikely be impacted by the proposed modification, the **current conditions are considered outdated, and the following contemporary versions are recommended**, noting that most of these conditions are informative:

- **Waste management**

The burning off of trees and associated vegetation felled by clearing operations or builders' waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Council's General Manager or delegate.

- **Waste Management (fill and spoil)**

All waste material removed from or imported to the site is managed in accordance with the following requirements:

- All excavated material removed from the site has been classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility.
- All fill material imported to the site must be:
  - o Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997*, and/or
  - o A material identified as being subject to a resource recovery exemption by the NSW EPA.

All VENM or waste-derived fill material subject to a resource recovery exemption must be accompanied by documentation as to

the material's compliance and must be provided to the Principal Certifier or Council on request.

- **Red Imported Fire Ants**

The importation of any of the following fire ant carrier material from invasive ant biosecurity zones must be in accordance with the current NSW Biosecurity orders available at [www.dpi.nsw.gov.au](http://www.dpi.nsw.gov.au) and meet the requirements of NSW Department of Primary Industries:

- organic mulch, compost, growing media, manure, soil and anything with soil on it, hay, chaff, or silage;
- potted plants;
- turf;
- agricultural equipment or earth-moving equipment;
- mining and quarrying materials;
- grass;
- vegetation and clippings; or
- other fire ant carrier material identified within the order.

Prior to the importation of each material type, the supplier must provide the receiver and the Principal Certifier or Council with the relevant form and/or certificate as identified within the order. All material shall meet the requirements of the relevant form/certificate.

It is an offence under the *Biosecurity Act 2015* if this material comes from within 5 kilometres of a known invasive ant infested area (e.g. identified Fire Ant Biosecurity Zones in Queensland), or any other place at which the person knows, or ought reasonably to know, that an invasive ant has been detected, unless the carrier material has been managed and treated to reduce the risk and meets the certification requirements listed in the order.

## 6. **Planning**

### 6.1 **Proposed / Recommended Amended Conditions**

Below is a summary of the proposed / recommended conditions:

- **A2 Development Description** – The proposed amendment of **Condition A2(1)(a)** to reference “16” rural residential lots on land zoned 1(c) Rural Living is **not supported**. The existing approval for 17 lots in total (including Lot 3 DP819065). All other proposed amendments to Condition A2 are supported.
- **A3 Development in Accordance with Plans** – Given the matters raised above, the revised subdivision layout is not supported and accordingly, the proposed amendment to **Condition A3** to reflect the proposed subdivision plan is **not supported**.
- **B2 Fill** – Until the ecological concerns raised in Item 1 above are suitably addressed, the proposed removal of reference to the Rusty Plum and Long-leafed Tuckeroo from **Condition B2(5)** is **not supported**.

- **B2 Fill** – refer to Item 5.2 above with regard to a recommended contemporary wording for a Waste Management condition.
- **B4 Stormwater & Drainage Works Design** – As noted in Item 3 above, Council recommends an amendment to Condition B4 with regard to geotechnical concerns associated with the existing dam. It is also noted the **Condition B4(e)** requires amendment to reflect the existing dam within Lot 16 (as opposed to Lot 11).
- **B7 Road Design** – **no objection** to the proposed amendment (refer to Item 4 above). Note comment in Item 6.2 below.
- **B8 Protection of Threatened Species** - Until the ecological concerns raised in Item 1 above are suitably addressed, the proposed removal of reference to the Rusty Plum and Long-leafed Tuckerroo from **Condition B8 is not supported**.
- **B9 Vegetation Management Plan** - Until the ecological concerns raised in Item 1 above are suitably addressed, the proposed removal of reference to the Rusty Plum and Long-leafed Tuckerroo from **Condition B9 is not supported**.
- **C5 Construction Waste Management Plan** – refer to Item 5.2 above with regard to a recommended contemporary wording for a Construction Waste condition.
- **D5 Hours of Work** – refer to Item 5.1 above with regard to a recommended contemporary wording for an Hours of Work condition.
- **D6 Construction Noise Objective** – refer to Item 5.1 above with regard to a recommended contemporary wording for a Construction Noise condition.
- **D10 Waste Building Materials** – refer to Item 5.2 above with regard to a recommended contemporary wording for a Building Waste Management condition.
- **E8 Restriction on Title – Tree Protection** - Until the ecological concerns raised in Item 1 above are suitably addressed, the proposed removal of reference to the Rusty Plum and Long-leafed Tuckerroo from **Condition E8 is not supported**.
- **E10 Restriction on Title – Tree Protection** - Until the ecological concerns raised in Item 1 above are suitably addressed, the proposed removal of reference to the Rusty Plum and Long-leafed Tuckerroo from **Condition E10 is not supported**.
- **AN5 Noise Generation** – refer to Item 5.1 above with regard to a recommended contemporary wording for a Noise Generation condition.



- **Bushfire Conditions (E9, E11, F1, F2 and proposed new conditions)** – Council will defer to the RFS for comment on these matters, noting reference to Item 1.3 above with regard to suggested amendments to the proponent's Bushfire Hazard Assessment.

#### 6.2 Inclusion of Lot 17

It is noted that Lot 17 of the original approval (Lot 3 DP819065) is not included in the Modification application. In this regard it is also noted that **Condition B7(6)** requires an access handle across Lot 16 to serve Lot 17 – this has not been addressed in the Mod / revised plan.

#### 6.3 Review of all Conditions

It is recommended that the Department undertake a review of the consent conditions in order to update them to more contemporary requirements (in addition to those recommended above), updated references (such as 'Subdivision Works Certificate' rather than 'Construction Certificate') and reference to contemporary clauses of the Act etc.

#### 6.4 Modification numbering

It is noted that the current modification is noted as 'Mod 2', yet there has been no previous modifications. A search of the SSD Portal indicates that the 'Mod 1' is unrelated to this site, being associated with DA212-9-2004 in Newcastle.

In summary, given the matters raised above, the **proposed modification is formally objected to**. Should the proponent suitably address the outstanding matters, Council requests an opportunity to review the amended proposal.

Should the Department consider the modification as satisfactory, Council requests an opportunity to provide comments on / recommend appropriate draft conditions.

As always, Council is happy to meet with the proponent and the Department to further discuss any of the matters raised above.

For further information regarding this matter please contact Colleen Forbes on (02) 6670 2596.

Yours faithfully



11/12/2024

**Per Lindsay McGavin**

Manager Development Assessment and Compliance