

Council Reference: DA10/0853.08 LN20960
Your Reference: MP06_0316 & MP08_0200



13 September 2016

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Attention: Fiona Gibson

Dear Sir/Madam

Combined comments on the proposed modification of the Cobaki Concept Approval (MP06_0316 Mod 5) and the proposed modification of the Project Approval (MP08_0200 Mod 4) with regard to water supply and waste water treatment.

I refer to your letter dated 12 August 2016 inviting Council to make a submission on the proposed modifications to the Cobaki Concept Plan (Mod 5) and associated Cobaki Development Code, as well as the Cobaki Project Approval (Mod 4). Please find below comments on both proposed Mods.

1. Concept Approval 06 0316 MOD 5

a. Condition A1 – *Project Description*

It is proposed to amend Condition A1 to include additional wording at the end of the final bullet point as follows (changes shown in italics):

- Utility service infrastructure *inc. private infrastructure otherwise authorized under the Water Industry Competition Act 2006.*

Comment:

No major objections are raised to the proposed additional wording, however it is recommended that the revised wording be amended as follows (amendment shown as struck through and in bold). The amendment is considered to allow for the possibility of Council and / or private infrastructure within the development site.

- Utility service infrastructure ~~inc.~~ **and / or** private infrastructure otherwise authorized under the Water Industry Competition Act 2006.

b. Condition A3 – *Project in Accordance with Documents*

It is proposed to amend Item 10 of Condition A3 to provide for a revised Statement of Commitments:

- (10) *Final Statement of Commitments as amended in July 2016 to reflect the potential provision of Water and Sewerage services under the Water Industry Competition Act 2006.*

Comment:

It is noted that the applicant has made reference to the original condition (Item 10), which was replaced by Condition A3 (4)(c) in Mod 1. As such, it is recommended that the applicant's proposed be applied to Item 4(c), with the following amendments shown in bold. The amendment is considered to allow for the possibility of Council or private infrastructure within the development site.

- c Revised Final Statement of Commitments *as amended in July 2016 to reflect the **potential** provision of Water and Sewerage services **under the Water Industry Competition Act 2006 by the relevant sewer and water authority.***

c. Schedule 3 – Statement of Commitments

It is proposed to include an additional commitment at the end of the existing Statement of Commitments, as follows:

15. *Environmental Outcome:*

All water and sewer infrastructure is to be constructed in accord with relevant approvals and to the necessary standard.

Commitment: That where the proponent does not seek to utilise Tweed Shire Council for the provision of Water & Sewer infrastructure, that such infrastructure will be provided in accord with the private approval requirements outlined under the Water Industry Competition Act, 2006 and associated regulations.

Timing: at each relevant stage of development.

Comment:

No objection is raised to the proposed additional commitment.

2. Cobaki Development Code

a. Code Modification Request 1

It is proposed to amend Control h within the Exempt provisions of the Code as follows (changes shown as struck through and underlined):

- 2.0 Exempt & Complying Development
- 2.1 Exempt Development

Controls

- (h) if work involves any plumbing or drainage works, approval for such work under the Local Government Act must be obtained from the ~~local~~ relevant water and sewer authority.

Comment:

No objection is raised to the proposed amendment to Control h. However, it should be noted that Council is of the understanding that a licenced utility is not able to give any approvals under the Local Government Act.

It also considered relevant to amend Control b of the same Exempt provisions, with the following amendments shown as struck through and in bold. The amendment is considered to allow for the possibility of Council or private infrastructure within the development site.

- (b) be more than 1 metre from any easement or public sewer main, stormwater main, water main or related fixture and comply with the requirements of the ~~local~~ **relevant** sewer and water authority, and

b. Code Modification Request 2

It is proposed to amend Development Standard 2.1.64(3) within Subdivision 31 - Rainwater Tanks (above ground) of the Exempt provisions of the Code as follows (changes shown as struck through and underlined):

- (3) If reticulated water is provided to the lot, the development must not be connected to reticulated ~~town~~ water supply without the prior approval of the ~~local~~ relevant water authority.

Comment:

No objection is raised to the proposed amendment to the Code.

c. Code Modification Request 3

It is proposed to amend Development Standard 2.2.1(1)(b) within Subdivision 1 - Site Requirements of the Residential Complying provisions of the Code as follows (changes shown as struck through and underlined):

2.2.1 Lot requirements

- (1) Development specified for this Code must only be carried out on a lot that:
 - (a) is a nominated lot for the type of development proposed, and
 - (b) has a direct connection to the ~~Council's~~ reticulated water supply and sewer.

Comment:

No major objections are raised to the proposed amendments, however it is recommended that the revised wording be amended as follows (amendment shown in bold). The amendment is considered to allow for the possibility of Council or private infrastructure within the development site.

2.2.1 Lot requirements

- (1) Development specified for this Code must only be carried out on a lot that:
 - (a) is a nominated lot for the type of development proposed, and
 - (b) has a direct connection to the **authorised** ~~Council's~~ reticulated water supply and sewer.

3. Additional Amendments to the Development Code

Following a review of the Development Code with respect to the potential for a private water and sewer supplier, the following additional amendments are raised for consideration:

a. Below Ground Rainwater Tanks

Following on from Item 2(b) above (exempt above ground rainwater tanks), it is considered appropriate that a similar amendment be applied to the exempt below ground rainwater tank provisions. As such, it is recommended that Development Standard 2.1.66(3) within Subdivision 32 - Rainwater Tanks (below ground) be amended as follows (changes shown as struck through and bold):

- (3) If reticulated water is provided to the lot, the development must not be connected to reticulated ~~town~~ water **supply** without the prior approval of the ~~local~~ **relevant** water authority.

b. Temporary Builders' Structures

Similar to the above, it is considered appropriate to amend the exempt provisions for Temporary Builders' Structures. Accordingly it is recommended that Development Standard 2.1.80(e) within Subdivision 39 - Temporary Builders' Structures be amended as follows (changes shown as struck through and bold):

- (e) not be connected to a reticulated ~~town~~ water **supply** or sewer without the prior approval of the ~~local~~ **relevant** water and sewer authority.

c. Toilet Facilities (residential)

Similar to the above, it is considered appropriate to amend Schedule 3 of the Code (Conditions Applying to Complying Development Certificate under the Residential Complying Development Code) in relation to toilet facilities. Accordingly it is recommended that Condition 2(2)(a) within Division 1 – Conditions applying before works commence be amended as follows (changes shown as struck through and bold):

- (a) be a standard flushing toilet connected to a ~~a~~ **an authorised** public sewer, or

d. Toilet Facilities (commercial / industrial)

Similar to the above, it is considered appropriate to amend Schedule 3 of the Code (Conditions Applying to Complying Development Certificate under the Commercial and Industrial Complying Development Code) in relation to toilet facilities. Accordingly it is recommended that Condition 2(2)(a) within Division 2 – Conditions applying before works commence be amended as follows (changes shown as struck through and bold):

- (a) be a standard flushing toilet connected to a ~~a~~ **an authorised** public sewer, or

e. Relationship to Tweed DCP Section A5 – Subdivision Manual

The subdivision controls under Section 5.2 of the Code identify the relationship of the subdivision controls of the Code with the subdivision controls under Council's DCP A5. Effectively, the current wording of Section 5.2 requires compliance with Council development standards and design specification for all aspects of subdivision, '*...except where varied by departures contained in Section 5 of this Code*'.

With respect to Section 5 – Subdivision Controls, the applicant has made no proposed amendment of the Code to provide for an alternative water / sewer provider. As such, without any proposed amendment to Section 5, any subdivision works incorporating water and sewer will need to comply with Council's standards and design specifications.

In order to provide the same flexibility to the subdivision controls as that being proposed for exempt and complying provisions within the Code, the applicant will need to identify the appropriate controls to be amended / added.

4. **General Comments**

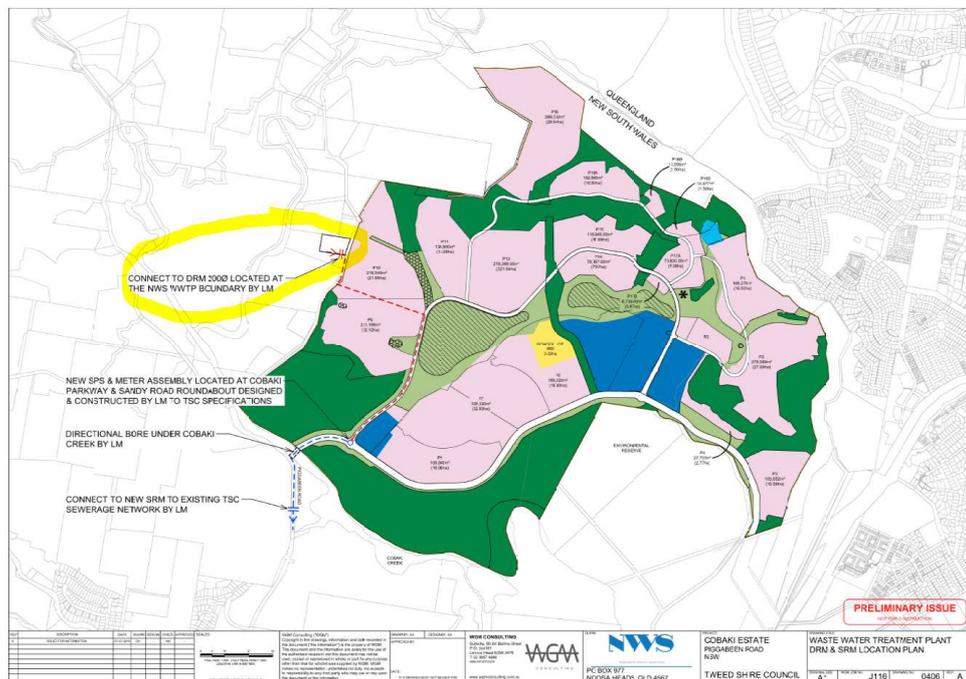
Following a review of the proposed modification of the Concept Approval and the Development Code, the following additional comments are provided for consideration:

a. **Waste Water Treatment Plant**

The applicant's modification letter states that they are seeking the Mod "...so as to facilitate the construction of a private Water and Waste Water Treatment Plant (pursuant to the provisions of the Water Industry Competition Act, 2006) and associated sewerage and water supply infrastructure upon land owned by Leda Manorstead Pty Ltd (the Cobaki Development)".

It is unclear where the exact location of the Waste Water Treatment Plant (WWTP) is being proposed. Some documents provided by the proponents' consultant (Northern Water Supply – NWS) note that the WWTP will be "within the geographic boundary of development", yet other documents note that the WWTP will be "located on land on Piggabeen Road adjacent precinct 10 of the development".

One of the reports provided to Council by NWS identifies the proposed WWTP adjacent to Precinct 10 but clearly offsite, as shown below (yellow highlight added for clarity).



If the proposed WWTP is to be located within the Cobaki development site, the approved Concept Plan should be amended to identify the location of such infrastructure and the Development Matrix amended to identify the allowable uses (i.e. Sewerage Treatment Plant, which is a type of Sewerage System).

What are the planning considerations in terms of the Concept Plan Approval if the WWTP is proposed to be located offsite?

It is noted that the proposed Mod 5 has not been publicly advertised. Given the potential impact on neighbouring properties by a proposed WWTP, public exhibition of such a proposal is considered to be warranted, particularly given that such infrastructure has never been considered before, with connection to Council's reticulated sewer always being available.

Although not specifically related to the proposed Mod, it should also be noted that the first 500 lots to be developed within the Cobaki site are proposed to be connected to Council's reticulated sewer system, as the proposed WWTP will not be constructed by that stage.

b. Concurrent Amendments

The applicant has noted that concurrent requests for amendments to Tweed Shire Council consents (DA10/0800 and DA10/0801) have been made. Please be advised that both of these S96 applications have been withdrawn, awaiting approval of the proposed Mods.

c. IPART Application

Council is aware that NWS is in the process of preparing an application to IPART for an operator's licence to facilitate the proposed private water and sewer utilities.

On 21 July 2016 Council resolved to issue a letter to NWS advising that "*...it is technically feasible for Council to provide bulk water and receive treated wastewater from NWS for the Cobaki development, subject to:*

1. *Determining the impact on Council's infrastructure;*
2. *Developing an agreement which ensures Council is not disadvantaged; and*
3. *A further resolution of Council approving the negotiated agreement".*

Council is currently reviewing the NWS proposal and is liaising with them in terms of a possible negotiated agreement.

5. Project Approval 08_0200 MOD 4

a. Condition 7 – *Subdivision Manual*

It is proposed to amend Condition 7 to include an additional requirement as Item c as follows (changes shown in italics):

- c. *Notwithstanding condition 7a above, where there is an inconsistency between this consent and any water and sewer infrastructure sought under the Water Industry Competition Act, 2006, then the provision of the Water Industry Competition Act 2006 and any approval granted under this legislation, will prevail.*

Comment:

No major objections are raised to the proposed additional wording; however it is recommended that the wording be amended as follows (amendment shown in bold). The amendment is considered to allow for the possibility of both Council and private infrastructure within the development site.

- c. **Notwithstanding condition 7a above, where there is an inconsistency between this consent and any water and sewer infrastructure sought under the Water Industry**

Competition Act, 2006, then the provision of the Water Industry Competition Act 2006 and any approval granted under this legislation, will prevail, **to the extent of the inconsistency.**

b. Condition 17 – Water and Sewer Infrastructure

It is proposed to amend Condition 17 to include an additional requirement as Item e as follows (changes shown in italics):

- e. *The above condition is only applicable where the proponent seeks to have Water and Sewer infrastructure provided by Council. In the event that such services are sought under the provisions of the Water Industry Competition Act, 2006, the above conditions are not applicable unless they form part of an alternate agreement between the developer and Council or the Water & Sewer authority authorised under WICA and Council.*

Comment:

The proponent's proposed additional wording is not supported. The proposed wording seeks to nullify the existing condition in the event that these particular pipes (water / sewer mains running along the Cobaki Parkway to Cobaki Bridge) will belong to a licenced private water / sewer provider. At this point in time it is not clear whether these mains will be Council owned or private utility controlled assets.

In terms of construction of the mains, parts b, c and d of Condition 17 are considered to be applicable, regardless of their ownership. As such, the applicant's proposed wording for part e is not supported. It is also considered warranted to also reference Section 68 for water and sewer under the Local Government Act with part a. For clarity, it is recommended that Condition 17 be amended as follows (amendments shown in bold and struck through). The amendment is considered to allow for the possibility of both Council and private infrastructure within the development site.

- a. Design and construction of the water main and sewer rising mains proposed along Cobaki Parkway to Cobaki Creek Bridge **if not constructed under a WIC Act Licence**, must be subject to separate construction certificate approval **and / or Section 68 approval under the Local Government Act for water and sewer** by Council and shall be generally in accordance with the following plan prepared by Yeats Consulting Engineers:

YC0229-1P1-TP01	B	Temporary Water and Sewer Rising Main Plan	17 September 2010
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- b. The design of these services shall take into account soil settlement and geotechnical issues in those areas.

Note: The proponent shall ensure that the water main and sewer rising mains proposed along Cobaki Parkway to Cobaki Creek Bridge are in place prior to the release of the first residential lots (or other land uses that require their operation).

- c. The proponent shall demonstrate that timing of construction of the water main and sewer rising mains proposed along Cobaki Parkway to Cobaki Creek Bridge is coordinated with preload for all other roadways and structures in this corridor, to the satisfaction of Council.
- d. The water main and sewer rising mains proposed along Cobaki Parkway to Cobaki Creek Bridge must be designed to ensure their integrity is sustained during flood events, particularly through the floodway section, and in the embankment between the culverts and Cobaki Creek Bridge.

- e. The above condition **(a)** is only applicable where the proponent seeks to have Water and Sewer infrastructure provided by Council. In the event that such services are sought under the provisions of the Water Industry Competition Act, 2006, the above conditions are not applicable unless they form part of an alternate agreement between the developer and Council or the Water & Sewer authority authorised under WICA and Council **particular mains are to become Council assets. If the pipelines are to be constructed and operated under the provisions of a WIC Act licence, they may be constructed and operated under the provisions of the Infrastructure SEPP and the licenced approved scheme.**

c. Condition 58 – Works as Executed

It is proposed to amend Condition 58(d) to include additional wording as follows (changes shown underlined):

- d. Where required, the plans are endorsed by a Registered Surveyor or a Consulting Engineer certifying that:
- i. All relevant drainage systems, sewer lines, services and structures (as appropriate) are wholly contained within an appropriate easement created by the subdivision.
 - ii. The plans accurately reflect the Works as Executed.

Comment:

Given that Council (being the Road Authority) needs to know the location of any infrastructure within the road reserve (regardless of ownership of the infrastructure), the proposed additional wording is not supported.

In addition, it is considered warranted make reference to water lines within the wording of part d(i) as follows (amendment shown in bold):

- d. The plans are endorsed by a Registered Surveyor or a Consulting Engineer certifying that:
- i. All relevant drainage systems, **water and** sewer lines, services and structures (as appropriate) are wholly contained within an appropriate easement created by the subdivision.
 - ii. The plans accurately reflect the Works as Executed.

d. Schedule 3 – Statement of Commitments

It is proposed to include an additional commitment at the end of the existing Statement of Commitments, as follows:

13. *Environmental Outcome:*

All water and sewer infrastructure is to be constructed in accord with relevant approvals and to the necessary standard.

Commitment: That where the proponent does not seek to utilise Tweed Shire Council for the provision of Water & Sewer infrastructure, that such infrastructure will be provided in accord with the private approval requirements outlined under the Water Industry Competition Act, 2006 and associated regulations.

Timing: at each relevant stage of development.

Comment:

No objection is raised to the proposed additional commitment.

6. Additional Amendments to the Project Approval

Following a review of the Project Approval with respect to the potential for a private water and sewer supplier, the following additional amendments are raised for consideration:

a. **Condition 4 – Project in Accordance with Documents**

To be consistent with previous modifications, it is recommended that an additional point (q) be added to the end of Condition 4 to make reference to the modification report / letter associated with the current Mod 4?

b. **Condition 5 – Inconsistency Between Documents**

It appears that there is a “double-up” of wording within Condition 5(b). The following amendment is therefore recommended (amendment shown as struck through):

- b. Any document listed in Conditions 3 and 4 above ~~and any other document listed in Conditions 3 and 4 above~~, the most recent document shall prevail to the extent of the inconsistency; and

c. **Condition 8 – Certification**

In order to clarify certification requirements associated Council infrastructure, the following amendments are recommended to Condition 8(a) and (b). The changes will align with recent changes made to Council's Water / Wastewater requirements (changes shown as struck through and bold):

- a. Construction Certificate: Prior to the commencement of works, the proponent must obtain the appropriate Construction Certificate(s) for the proposed works from either the Council or an accredited certifier, **plus Section 68 approval under the Local Government Act for any water and sewer not constructed under a WIC Act Licence.**
- b. Subdivision Certificate: Prior to registration of the plan of subdivision of the project, under Division 3 of Part 23 of the Conveyancing Act 1919, a Subdivision Certificate pursuant to Section 109C(1)(d) of the Act must be obtained ~~from the Council~~ **in accordance with Section 109D(1)(d) of the Act, plus a Certificate of Compliance under Section 307 of the Water Management Act 2000 for any water and sewer not constructed under a WIC Act Licence that services the subdivision. Works carried out under a WIC Act Licence must be appropriately certified by the licenced network operator.**

d. **Condition 11 – Registration of Easements / Restrictions to use / Right of carriageway**

Consideration should be given to providing clarification as to what is meant by the term “public” within Condition 11(a)(i). Does this refer to only Council owned infrastructure and services? If that is the intent, concern is raised that in the event that Council is the “Service Provider of Last Resort”, Council would want easements over infrastructure owned by NWS.

- a. The creation of easements for services, rights of carriageway and restrictions as to user are applicable under Section 88B of the Conveyancing Act 1919, including (but not limited to) the following:
 - i. Easements for sewer, water supply and stormwater/drainage over all public services/infrastructure on private property.

Similar to amendments noted above, it is considered appropriate to amend the wording of Condition 11(e) to provide for the flexibility being requested by Mod 4 (amendment shown as struck through and bold). In addition, it is recommended that the Department consider clarifying what is meant by the reference to “restriction” in the same condition:

- e. The restriction is to be clearly marked on the plan of subdivision and ~~Council~~ **relevant authority** is to be nominated as the sole party to vary, modify and/or extinguish the restriction.

e. Condition 13 – Bond for Works

It is considered appropriate to amend the wording of Condition 13 to align with recent changes made to Council’s Water / Wastewater requirements (changes shown as bold):

Prior to the issue of a Construction Certificate for Civil Works **or issue of a Section 68 for water and sewer under the Local Government Act (as applicable)**, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the Civil works as set out in Council’s fees and charges at the time of payment. The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this approval, which are not being addressed to the satisfaction of Council.

The bond will be refunded, if not expended, when the associated Subdivision Certificate is issued.

Please note that whilst Council has undertaken a review of the applicable amendments required to allow the flexibility sought by the proponent, it may not be an exhaustive analysis of the respective documents. Ultimately, the proponent is responsible for identifying all amendments required to allow for alternate water and sewer infrastructure.

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

Yours faithfully

Lindsay McGavin
Manager Development Assessment and