

28 August 2019

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Attention: Patrick Copas

Dear Sir / Madam

**Tweed Shire Council Submission - Australian Bay Lobster Producers (ABLP)
DA 282-11-2004-i Mod 4**

I refer to the recent exhibition of the proposed modification of DA 282-11-2004-I Mod 4 for the Australian Bay Lobster Facility at Lot 1 DP 1192506, 9484 Tweed Valley Way, Chinderah. Council officers have undertaken a review of the proposal and provide the following comments for the Department's consideration.

1. Component No 1

At present the Consent requires ABLP to construct a bund wall as a flood mitigation precaution for Stages 2 and 3. Component No 1 of MOD 4 seeks to modify the Consent to permit ABLP to continue to fill and raise the ABLP site (to approximately RL 4.0m AHD as has occurred for Stage 1) for Stages 2 and 3 in lieu of the bund, as the method of flood mitigation. The proposal to fill the site with Excavated Natural Material (ENM) and Potential Acid Sulfate Soils (PASS), as well as the current approval for Virgin Excavated Natural Material (VENM) would require modification to existing Condition 4.39, which currently reads as:

4.39 Any fill material brought to site must be Virgin Excavated Natural Material (VENM).

1.1 Acid Sulfate Soils

The subject site is mapped as being Class 2 and Class 3 Acid Sulfate Soils.

It is noted that an Acid Sulfate Soil Management Plan (ASSMP) has been submitted as part of the application, which outlines methods for the treatment, validation and land application of PASS material being proposed to be used as fill material. The ASSMP also outlines procedures for the treatment of leachate before discharge, however does not specify where the treated leachate would be discharged to. This needs to be clarified.

In discussion with EPA officers on 16 August 2019, the officers advised that they had concerns with the leachate pond calculations. Further comment is required from EPA in regard to this.

The ASSMP states that ENM and PASS testing would be undertaken for all material at the site of generation, before being transported to the ABLP site.

This testing would inform on the constituents of the material, and any treatment calculations required for PASS material. It is presently unclear which mechanism or pathway the generators would use to demonstrate adherence to relevant legislation and guidelines. S149 Certificates (now known as s10.7 Planning Certificates) are mentioned in the ASSMP, however resource recovery exemptions and orders involve treating and validation at the site of generation, not at the receiving site. It is also unclear how material generated in Qld would tie-in with NSW requirements. Further clarification from the proponent and the EPA is required on this subject.

The location of the treatment pad and leachate pond is not clear and has conflicting information in the Traffic report and the ASSMP. Further information is required regarding this matter.

1.2 Waste Management

Legislation requires that facilities / locations that treat ASS should be Licenced Premises. It is also noted that Condition 4.57 states:

“The applicant must not cause, permit or allow any waste generated outside the site to be received at the site for storage, treatment, processing, reprocessing or disposal, or any waste generated at the site to be disposed of at the site, except as expressly permitted by a licence issued under the Protection of the Environment Operations Act 1997”.

Clarification is required from the proponent as to whether application will be made for an Environment Protection Licence for a waste facility.

The proposed importation of approximately 2 million cubic metres, 25% of which will be PASS material requiring treatment, is not considered to be ‘ancillary’ to the approved use of the site. Accordingly, it is considered that the proposed treatment of waste material is Designated Development. In addition, the proposed amendments are not considered to meet the provisions of s4.55(2) of the EP&A Act, in that the proposed modifications are not substantially the same as that originally approved. As such, Component 1 of Mod 4 is not supported and it is considered that a new development application is required.

1.3 Groundwater and Dewatering

The ASSMP describes leachate management ponds. It is unclear how these ponds would be constructed and to what depth. It is unclear whether the ponds would be excavated below the natural ground level, or whether fill would be imported and the ponds excavated out of the fill material. If they are to be excavated below the natural ground level, it is unclear whether dewatering will need to be undertaken during excavation and to facilitate lining of the ponds.

As noted previously, the site is within ASS mapped area. If the natural ground is proposed to be excavated, it is unclear how the excavated material will be treated and where, given the leachate ponds will not yet exist.

In addition, it is unclear how the ABLP site would deal with potentially contaminated soil if this should be revealed during validation testing.

1.4 Dust Impact

The Modification Report advises that the “...*volume of fill material and its transport to the ABLP site for Stages 2 and 3 will remain unchanged*”. This statement is not supported in that the current approval requires bunding as opposed to filling of the site, which significantly increases the volume of fill being transported to the site. Whilst it is noted that the proponent states that existing air quality and dust management methods would be employed, it is considered appropriate that a review of dust control assessment be undertaken by the proponent.

It is noted that dust impact was considered in the original assessment and applicable conditions applied: 4.48, 4.49, 4.50, 8.2 (CMP). Part of the proponent’s review should consider whether the existing conditions are still suitable or need amendment to address the proposed additional fill.

1.5 Flooding Assessment

The proponent proposes to amend the currently approved perimeter flood bund to a conventional fill pad. Approximately 2 million cubic metres of fill is required and it is proposed to be imported on an opportunistic basis as fill becomes available.

From a flooding perspective, there is very little difference in these two approaches. The Tweed Valley Floodplain Risk Management Study investigated the effects of cumulative development scenarios including bunding of the subject site to 1% AEP level. This scenario was deemed to have negligible effect of flooding. Therefore, the proposed filling is acceptable.

1.6 Erosion & Sediment Control

The proposal will result in a large area of earthworks and un-stabilised ground surfaces being exposed for a long period of time. Long term Erosion and Sediment Control will be important to avoid negative impacts on the downstream land and aquatic environments. The current approval requires the proponent to prepare an Erosion and Sediment Control Management Plan and provide proof of the measures install to the principal certifying authority. This is considered an appropriate approach to managing this risk.

1.7 Traffic

Although not directly mentioned under Component 1, it is noted in Section 7.0 of the proponent’s report that several updates are requested for **Conditions 4.28 to Condition 4.37** in relation to car parking and traffic management.

With regard to the proposed modified site operations, the consent conditions relating to vehicle movements at the Tweed Valley Way / Melaleuca Station intersection should be modified (or deleted if no longer necessary) to reflect the upgrade of the old u-turn facility to a roundabout. RMS should be consulted on any impacts on the Pacific Highway interchange imposed by the MOD. The only potential concern could be in the delivery of fill to the site, if done in convoys of heavy vehicles that affect operation of the interchange and possible queuing.

1.8 Additional Amendments under Component 1

It is proposed to remove any reference to: 'bundling' of the site; use of 'floodgates'; construction of a 'borrow pit'; and 'bundling' in the context of landscaping. In this regard, it is noted that the table in Section 7.0 requests amendments to: **Condition 4.10** (Stormwater Infrastructure); **Condition 4.13** (Flood Impacts – Bund Wall); **Condition 4.15** (Flood Impacts – Floodgates); and **Condition 4.16** (Perimeter Bund Wall - Landscaping).

Component 1 also notes a proposal to modify the consent to "...ensure that any applicable reference to the use of 'waste' materials (limited to PASS) for the purposes of permitted, subject to other regulatory approvals". No details have been provided in terms of which conditions may require amendment in this regard. The proponent has not incorporated any proposed wording for the recommended amendments. Accordingly, amendments to the abovementioned conditions are not supported.

Mod 4 does not include any proposed wording for any of the new / amended conditions. Section 7.0 of the proponent's s4.55(2) report incorrectly notes that "...For ease of reference the modified conditions cite the existing wording in the current Consent with amendments evidenced by underlined text (for additions) or struck out text (deletion)". It is difficult to provide comment on the proposal when it is unclear what the final wording for the relevant conditions may be. In this regard, Mod 4 is not supported.

It is also noted that whilst Section 7.0 incorporates a table of the conditions proposed for amendment, the table does not include Condition 4.39, which is seemingly critical to the proposal for filling the site with Excavated Natural Material (ENM) and Potential Acid Sulfate Soils (PASS), as well as the current approval for Virgin Excavated Natural Material (VENM).

In summary, it is considered that further information / detail is required from the proponent in order to adequately address the abovementioned matters. Until such time that further detail is provided for consideration, Component 1 of Mod 4 is not supported by Council.

2. Component No 2

Component No 2 of Mod 4 seeks to expand the permitted operations at the ABLP site to include aquaculture operations that are complimentary to the cultivation of bay lobster. To achieve this, the proponent is requesting to update the wording in Schedule 1 of the Consent along with the removal of restrictions imposed by **Condition 1.3** of Schedule 2 of the Consent, which reads as:

- 1.3 The development is restricted to the commercial cultivation of *Thenus orientalis* and *T. indicus* at the site.

Note: *Thenus* spp. are commonly known as Moreton Bay Bugs, Slipper Lobsters and Bay Lobsters (the latter being the internationally recognised name for these species).

Comment:

Council has no comment with regard to Component No 2, noting that the Department of Primary Industries is the appropriate authority in this regard.

3. Component No 3

Component No 3 of Mod 4 relates to the proposed inclusion of short term emergency accommodation on the subject site. The proponent states that the short term accommodation on the ABLP site would be for use in emergency situations “...at times of unavoidable natural and human risks” to ensure the health and safety of personnel on site.

The proposal incorporates three dongas in Stage 1 (currently on site) and an additional six dongas in Stages 2 and 3.

3.1 BCA Assessment

The application should include a Building Information Certificate application for the three existing dongas, accompanied by a BCA compliance report.

The submitted site plan is not dimensioned and there is a lack of detail to ascertain whether or not the dongas will satisfy the deemed to satisfy requirements of the BCA. An accurate and dimensioned site plan is required.

It is questioned as to whether the inclusion of short term accommodation on the site meets the provisions of s4.55(2) of the EP&A Act, in that the proposed modifications are not substantially the same as that originally approved.

3.2 Flooding Assessment

Mod 4 proposes prefabricated accommodation buildings (dongas) primarily to accommodate workers during periods of isolation due to flooding.

Flood Levels at the site:

Design Flood Level = 3.3m AHD

Minimum Habitable Floor Level = 3.8m AHD

PMF Level = 8.3m AHD

The proposed fill pad finished level is approximately RL 4m AHD and the proposed building is elevated by 0.5m resulting in an approximate floor level of RL 4.5m AHD.

As the primary purpose of this accommodation is habitation during flood events, for all flood related intents and purposes, it can be considered in the same manner as full time residential accommodation; a dwelling. Council's DCP-A3 *Development of Flood Liable Land* requires that residential development in RU1 zones has either a permanent high level evacuation route to land above PMF or an adequate PMF refuge. The subject site does not have access to a high level evacuation route and is unlikely to be able to establish one. Therefore, it is considered that the only option open to the proponent is to incorporate a PMF refuge into their accommodation design.

In this regard, the proponent should provide a Flood Response Assessment Plan for the proposed accommodation dongas that complies with Tweed Development Control Plan Section A3 – Development of Flood Liable Land.

In summary, it is considered that further information / detail is required from the proponent in order to adequately address the abovementioned matters. Until such time that further detail is provided for consideration, Component 3 of Mod 4 is not supported by Council.

4. **Component No 4**

Component No 4 of Mod 4 seeks to amend the amount of seawater collected from Tugun Desalination Plant to align with the EPA approval / license. Whilst not discussed under the heading of Component No 4, the proponent later notes that the current approval limits seawater extraction from the desalination plant to only 160,000 litres (160kL) per day. It is proposed to amend the Definitions in Schedule 2 of the consent to amend '**Stage 1b Works**' to reflect the daily discharge limits permitted by the EPA licence (5,947kL per day).

4.1 **Wastewater Assessment**

It is noted that the existing consent has the following conditions regarding the effluent discharge:

Effluent Discharge Point

- 4.2 ⁶Prior to the commencement of construction, the Applicant must establish wastewater discharge quality and quantity monitoring points that are located at the point at which effluent is discharged from the site.

Effluent Discharge Limits

- 4.3 ⁷The Applicant must design, construct, operate and maintain the development to ensure that discharges of wastewater from the site only occur from the discharge point(s) identified under condition 4.2, and that for each discharge point(s), the concentration/ range of each pollutant/ parameter listed under Table 1 does not exceed the discharge limit for that pollutant/ parameter at the discharge point.

To avoid any doubt, this condition does not authorise the discharge or emission of any other pollutants.

Table 1. Maximum Allowable Discharge Concentration Limits (Waters)

Pollutant/ Parameter	Units of Measure	90% Allowable Concentration Limit	100% Allowable Concentration Limit
Biochemical Oxygen Demand (BOD)	mg/L	10	20
Total Suspended Solids (TSS) ^a	mg/L	15	30
Total Phosphorus (TP)	mg/L	0.3	1
Total Nitrogen (TN)	mg/L	5	20
Ammonia	mg/L	< 1	5
Oils and Grease	mg/L	2	6
Faecal Coliforms	cfu/100mL	200	600
pH ^b	-	6.5 – 8.5	6.5 – 8.5

a. TSS (Total Suspended Solids) was previously called NFR (Non-Filterable Residue) but refers to the same measurement.

b. For pH quality limits, the specified percentage of samples must be within the specified ranges noted in the Table.

- 4.4 ⁸For the discharge point(s) identified under condition 4.2, the volume of effluent discharged must not exceed a total of 600 kilolitres (kL) per day for each stage of the development.

Note: At full-scale operation (all three stages operating), the Applicant is permitted to discharge a combined total from all three farms of 1800 kL per day.

The concern Council has with Component 4 is that by removing the total limit of 1,800 kilolitres per day for all three stages in the consent implies that the consent allows ABLP to discharge up to the EPA license discharge limits of 5,497,000 litres of seawater per day out of Council's effluent main.

The effluent main from the Kingscliff WasteWater Treatment Plant was designed for discharges for Council and significant discharges from ABLP within this pipeline may result in Council not be able to discharge from its own main or not meet Council's license requirements.

As such, the proposed amendments to remove the discharge limits under Condition 4.3 and increase the discharge volume under Condition 4.4 are not supported in any way.

5. **Component No 5**

In conjunction with the above proposed amendment for daily seawater extraction limits, Component No 5 of Mod 4 seeks to amend the consent to formally allow unlimited collection of seawater from the Tugun Desalination Plant, with ABLP's operations running on a 24hr, seven day per week cycle. In order to provide clarity in terms of vehicle movements to and from the site, the proponent is requesting an amendment of Condition 4.53, which currently reads as:

4.53 Operation activities associated with the development, including the arrival and departure of vehicles delivering or removing products from the site, may be undertaken twenty four (24) hours a day, seven (7) days a week provided the noise contribution limits comply with the EPA's *Industrial Noise Policy*.

Whilst no particular wording is being proposed, the proponent is requesting **Condition 4.53** be amended to allow *"...vehicle movements to and from the Tugun Desalination Plan and any other water source, at any time over a 24 hour period"*.

In this regard, it is also noted that the proponent wishes to include extraction from the Tweed River (adjacent to Jack Evans Boat Harbour) as an alternative to the desalination plant, in the event that seawater is unable to be sourced from the plant. Again, whilst no proposed wording has been provided, the proponent is seeking to amend the Definitions in Schedule 2 of the consent to amend **'Stage 1b Works'** to include Tweed River (at Jack Evans Boat Harbour) as a seawater extraction point up until December 2021.

Component 5 also notes that although *"...extraction of seawater from the desalination plant is unlikely to be required (on a permanent basis) once the pipeline is constructed, it is proposed to retain the ability to use water from the desalination plant (within the approval) even when the pipeline is constructed in the event that the pipeline cannot be used due to maintenance / repair requirements"*. No detail has been provided with regard to the amendment of any particular condition in this regard.

5.1 **Traffic Assessment**

It is acknowledged that Jack Evans Boat Harbour (JEBH) remains a valid point of extraction, for instances where the Tugun Desalination plant is unavailable, and until such time as the permanent sea water intake pipeline is operational.

The traffic impact assessment does not consider the impacts of truck movements accessing JEBH, at the potential higher extraction limits. While demand for this water may only be in the order of a couple of trucks per hour, this needs to be addressed by the proponent. Council's support for the extraction point would be contingent on the vehicles entering and leaving the extraction point in a forward direction, or otherwise in a manner

that will not pose a significant risk to other vehicles or pedestrians. This should include prohibiting the queuing of trucks to access the extraction point.

Given the proximity of residential development, the truck movements should remain restricted to the times currently imposed in Condition 4.51, and not allow 24/7 access for amenity reasons. It should be noted that there are no objections to 24/7 operations accessing Tugun Desalination or the ABLP site.

5.2 Noise Impact

The modification proposes changes to the operating times for water collection tankers, and requests permission to take greater volumes of water from JEBH and the Tugun Desalination Plant. This would involve an increase in the number of truck movements at these locations. The potential noise impacts on sensitive receptors from 24/7 truck movements and the extra truck movements has not been addressed.

Existing noise conditions appear to refer only to the arrival and departure of vehicles at the ABLP site and the seawater pump at Dreamtime Beach.

5.3 Waterway Impact

Component 5 incorporates the potential use of Council Administered Crown Land (Lot 704 DP 877249 and Lot 7344 DP 1166191) at Coral Street, Tweed Heads as a site from which it is proposed to extract sea water (emergency supply) from the Tweed River.

The area proposed for the extraction of sea water into a tanker truck, highlighted in the image below, is a particularly important recreation area within the Shire. As well as being a popular site for parking and viewing the river, walking and fishing, the site supports a thriving recreational diving community. At high tide on days with good conditions many people access the river at this location to take advantage of easy access, clear water and abundant marine life.

This use has been recognised in the Draft Jack Evans Boat Harbour Plan of Management 2019. Council's Waterways Program, in response to multiple requests from divers, is designing a safer access structure to be installed at the site, pending funds availability.



It is considered that the proposed use of the foreshore at this location, to collect large volumes of water with a tanker truck, is incompatible with the existing recreational use of the area. The intention of ABLP to increase their limit of water extraction from 160,000 litres per day to 5497KL, would if approved, create an even greater impact on this area, and could result in a significant negative impact on established community use and enjoyment of the foreshore.

Accordingly the proposed extraction of seawater at JEBH with the increase in extraction limits and 24/7 operations under Component No 5 are not supported.

5.4 Previous 'In-Principle' Agreement

The proponent makes reference to having consulted with TSC and makes reference to an email from January 2019, whereby an agreement in principle was obtained from Council for the extraction of seawater from the Tweed River adjacent to JEBH, in the event that an agreement with SEQ Water could not be obtained for water extraction at the desalination plant.

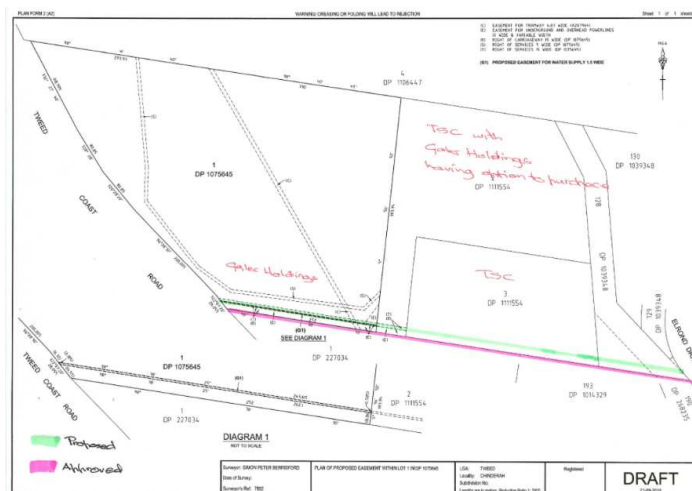
It should be noted that the 'urgent and critical' request from ABLP for access to seawater over a four week period made no reference to any significant increase in extraction limits, nor 24/7 operations. As noted in Council's email of 21 January 2019, the temporary extraction of seawater was based on further detail being provided and relevant consent being obtained from the Department, with Council needing to further consider any longer term proposal.

The abovementioned request for emergency extraction of seawater from JEBH is not considered to be adequate consultation with Council, particularly with regard to all aspects of Mod 4.

6. Component No 6

Component No 6 of Mod 4 relates to the proposed amendment of **Schedule 1 (Land Description)** to accurately reflect the property boundaries of land associated with the ABLP development.

Component 6 also seeks to modify the alignment of the pipeline between Tweed Coast Road and Elrond Avenue.



6.1 Land Description

The proponent has not provided a list of the applicable parcels of land associated with Mod 4. It is unclear as to whether the list includes land at JEBH for seawater extraction and whether appropriate owners consent has been obtained from Crown Lands in relation to Lot 7091 DP 1108680 (JEBH) and the Tweed River itself.

6.2 Easement Negotiations

Council and Gales Holdings have been in negotiations with ABLP in terms of the proposed realignment of the pipeline over the three allotments shown above. It is noted that an easement between 8m and 9.5m from the southern boundary of all three allotments is required.

6.3 Water / Wastewater Assessment

It is considered appropriate that the proponent update the wording for the modification, such that:

- i. The request makes it clear what the existing condition number should be modified;
- ii. Include the proposed wording for the condition; and
- iii. Include reference to the easement agreement for the pipeline location.

Should the proposed modification be granted approval, it is recommended that the following new condition be applied:

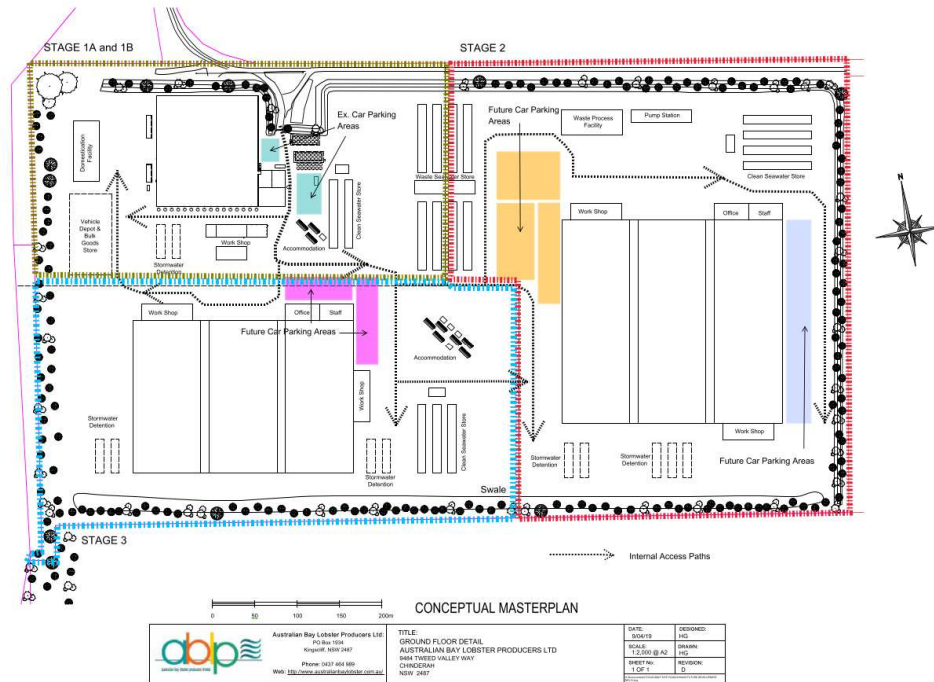
The proposed seawater intake pipeline shall have a minimum separation distance of one meter from the collar of the trunk water main and/ or sewer rising main.

6.3 Contaminated Land

The pipeline section proposed for realignment is approx. 50m north of Cudgen (Old) cattle dip site. It is noted the dip site is recorded as remediated, however this has not been addressed by the proponent. The proponent should address the DIPMAC due diligence questions.

7. Component No 7

Component No 7 of Mod 4 incorporates the conceptual site plan for all stages of the development, which is noted as being general and diagrammatical only.



7.1 General Comment

All structures shown on the Conceptual Masterplan should be labelled such that the proposed use for each structure is clearly notated. A plan for each stage at a larger scale would also be beneficial.

It does not appear that an assessment of the location / use of all proposed structures in Stages 2 and 3 was undertaken in the original consent.

8. Component No 8

Component No 8 of Mod 4 seeks a number of 'housekeeping' amendments to reflect the current operations at the ABLP site.

The proposed housekeeping modifications are to:

1. *Clearly reflect that the collection and delivery of seawater is an 'operational' requirements that is to be carried out at any time;*
2. *Remove reference to payment of road contributions (Condition 6.6) as this payment has already been made;*
3. *Remove any reference to the discharge of wastewater to any location other than the approved and existing discharge point, being the Tweed Shire Council Kingscliff Sewerage Treatment plant. Any reference to Chinderah is to be removed, along with any connected or related community consultation that is directly related to this discharge;*
4. *Modify the contents of Schedule 1 of the consent so as to properly reflect the modifications sought; and*
5. *Modify the contents of Schedule 2 of the consent to properly reflect the modifications sought.*

It is noted that the provisions of Component 8 are different within the Executive Summary to that of the main report. The Executive Summary incorporates an additional two matters:

- *Confirmation that seawater trucks are permitted to leave and enter the ALBP site over a 24 hour period for the purposes of supplying seawater; and*
- *Modify the consent to include a paragraph that permits ABLP to alter, relocate, remove or expand the car parking at the ABLP site in order to meet the growing demands of the Development, on the basis that such alteration, relocation, removal or expansion is in accordance with Australian Standards AS2890.1 1993 Off-Street Car Parking and the Tweed Shire Council's Code DCP A2 Site Access and Parking Code.*

8.1 Water / Wastewater Comment

It is not clear why House Keeping Modification Item No 3 is being requested, however the statement provided by the proponent is incorrect. Currently there is a commercially sized sewer ejection pumping station at the ABLP site that has a boundary kit at the property boundary and a private sewer rising main, which injects to Council's existing sewer rising main upstream of the Kingscliff WasteWater Treatment Plant.

Therefore, technically all of the sewerage discharge is private until it connects to Council's sewerage infrastructure. The wording that all wastewater discharge is under the control of Council is therefore incorrect, as it is a private sewerage system until it injects to our infrastructure.

It is considered appropriate that the proponent update the wording for the modification, such that:

- iv. It is clear what they propose the modified condition to say; and
- v. The wording makes it clear that the site has a private sewerage pumping station and rising main that injects to Council's sewerage infrastructure upstream of the Kingscliff WasteWater Treatment Plant.

8.2 General Comment

As noted previously, the proponent has not provided any draft amendments to the relevant conditions of consent that they are seeking amendment of.

9. Conclusion

As highlighted in the comments above, considerable additional information is required from the proponent in order to allow Council officers to undertake a thorough assessment of all components of Mod 4.

As noted in the above assessment, a large proportion of the proposed ABLP Mod 4 is not supported by Council, based on the current documentation available during the public exhibition period.

If the proponent provides additional information to address the matters raised above, Council would like the opportunity to undertake a further review of any amended proposal.

It is also recommended that any advancement of the proposal would benefit from pro-active, early communication with the local community.

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

Yours faithfully

Vince Connell
DIRECTOR PLANNING AND REGULATION