

8.1 DA 2011/105 - Section 96 - Bulk Storage

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Applicant	Newton Denny Chapelle
Property	Lot 20 DP 1051208 No. 1188 Teven Road Alstonville
Proposal	Section 96 Application Seeking to Amend DA 2011/105 for the Establishment of a Scaffold Business by Increasing the Hardstand Storage Area and provide a new driveway access onto Teven Road.
Effect of Planning Instrument	The land is zoned RU1 under the provisions of the Ballina LEP 2012
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

Council is in receipt of a Section 96 application seeking to modify the consent for an existing scaffolding storage business. The amendments being sought are:

- to incorporate an external storage yard
- to enlarge the extent of hardstand area for bulk storage of scaffolding equipment and maneuvering and
- to provide an additional driveway access to Teven Road.

The additional storage area is required as a result of the downturn in the building industry. This downturn has resulted in equipment, which would normally be located on building sites, having to be stored on the subject site. The application also seeks to re-open an old vehicular access onto Teven Road.

Council at its meeting of 26 May 2011, resolved to grant consent to the establishment of a "Bulk Store" for a scaffold business on the site. The development involved the construction of a shed and vehicular access for the bulk store of trucks and scaffold equipment. Under this consent all equipment and plant was to be stored within the shed (refer to attached Council report dated 26 May 2011).

The existing operation comprises, access to the site being gained from the northern end of the property with an access road through the property to the storage area at the southern end of the property.

The storage area comprises an 834m² hardstand area used for vehicle maneuvering and storage and a 24m x 9m storage shed approved for the purpose of storing scaffold, trucks and ancillary equipment associated with the use.

The additional area of 770m² to be used for maneuvering and storage purposes, is to be located to the north of the existing hard paved area, that is currently land that is fenced off from the remainder of the property.

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Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The application was placed on public exhibition in accordance with Council's Policy. No submissions of objection were received following exhibition. Five adjoining property owners have signed a prepared letter of support for the proposed amendment. The five property owners include those immediately adjoining the subject site to the west and north and on the opposite side of Teven Road.

Report

The application has been assessed under Sections 96(1A) and 79C of the Environmental Planning and Assessment Act 1979.

Environmental Planning and Assessment Act 1979

Section 96(1A) states: *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent was originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modifications within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

It is considered that the proposed amendment is substantially the same development as that originally approved given the total area of the land and the relative size of areas allocated to different uses within the site.

The amendment seeks to fill an additional 770m² of land for storage purposes. The additional storage area will almost double the size of the existing hardstand storage area, and is required for the storage of scaffolding equipment.

The additional storage area is required, as the downturn in the building industry has resulted in additional equipment, which would normally be deployed on building sites, being stored on the site.

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The increase in the amount of scaffolding stored on the site, is requiring equipment to be stored at a greater height within the confines of the existing shed. This is becoming a safety issue, as the higher the stacks the greater the likelihood of them falling. With the increase in storage area, equipment can be stored at a lower level, thus contributing to a safer work environment.

The proposed change will result in the ability to store additional equipment on site when required.

It is considered the proposed change will be of minimal environmental impact, as it will result in an unused area of the property being filled to a maximum height of 400mm so as to provide a hard stand area for storage purposes.

The main environmental impact will be from an increase in water run off. It is considered that this will have minimal environmental impact as the water will run into a seven metre wide grassed buffer area.

The other aspect to the proposed change, being the storage of equipment on the proposed hardstand area as opposed to being stored within the shed, will have minimal environmental impact as the site is not visible from Teven Road due to the existence of a line of mature trees along the Teven Road frontage of the site.

Ballina Local Environmental Plan 2012

The property is zoned RU1 Primary production. The objectives of the zone are as follows:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- To minimise the fragmentation and alienation of resource lands.*
- To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- To maintain the rural, cultural and landscape character of the locality.*
- To enable development that is compatible with the rural and environmental nature of the land.*
- To ensure that there is not unreasonable or uneconomic demands for the provision of public infrastructure.*

DA 2011/105 was determined in May 2011 under the provisions of BLEP 1987, which was the planning instrument applicable at the time. BLEP 1987 defined the use as a "Bulk Store".

A "Bulk Store" was permissible within the applicable zone at the time.

There is no definition for a "Bulk Store" in BLEP 2012.

Under the provisions of BLEP 2012 the proposed development would be best defined as a "Depot".

A "Depot" is defined as:

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A building or place used for the storage (but not sale or hire) of plant, machinery or other goods (that support the operations of an existing undertaking) when not required for use, but does not include a farm building.

A "Depot" is prohibited within zone RU1.

Consequently, the application is for the amendment of an existing use, and as such, the fact that the zoning prohibits the use is not reason itself for refusing the application.

Section 106 of the EP&A Act 1979 defines existing use as:

The use of a building, work or land for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use.

On 4 February 2013 Ballina Local Environmental Plan 2012 came into effect which prohibited Bulk Stores or similar within the applicable RU1 zone. Thus making the development, a use granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use. Therefore the use is an "existing use".

Section 107 of the EP&A Act provides in part:

- (1) Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.*
- (2) Nothing in subsection (1) authorises:*
 - (a) any alteration or extension to or rebuilding of a building or work, or*
 - (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or*
 - (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use.*

Section 108 provides that the regulations may make provision for or with respect to existing use and, in particular, for or with respect to:

- (a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use.*

Environmental Planning and Assessment Regulations 2000

Clause 41 provides in part that an existing use may be enlarged, expanded or intensified.

Clause 42 provides that development consent is required for any enlargement, expansion or intensification of an existing use and must be for the existing use and for no other use, and must be carried out only on the land on which the existing use was carried out immediately before the relevant date.

Clause 43 provides that development consent is required for any alteration or extension of a building or work used for an existing use.

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Development consent has been sought for an increase in the area to be used for the approved use and for no other use, and is being carried out on the same land as was originally approved.

It is considered that the application complies with the relevant sections of the EP&A Act 1979 and the EP&A Regulations 2000, as they relate to Existing Uses.

The proposed amendments are therefore permissible by virtue of "existing use rights"

State Environmental Planning Policy (Rural Lands) 2008

The subject land, is zoned RU1 under the provisions of BLEP 2012 and as such is subject to the provisions of SEPP (Rural Lands).

Clause 2 contains the aims of the SEPP which are:

- (a) to facilitate the orderly and economic use and development of rural lands for rural and related purposes,*
- (b) to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,*
- (c) to implement measures designed to reduce land use conflicts,*
- (d) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*
- (e) to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.*

The site is currently used for the purpose of a scaffolding business and this application seeks to extend the area to be used for that purpose. The subject site has an area of 3.742ha with a dwelling located in its centre. The site has limited economically sustainable agricultural potential.

The proposed expansion will have minimal impact on the orderly or economic use of the site for rural and related purposes.

Council has received no complaints regarding the existing use of the site.

The site is not identified as State Significant agricultural land.

The application does not involve concessional lots.

In consideration of the above, the proposed development is considered to be not inconsistent with the aims of the SEPP.

Clause 7 of the SEPP contains the following Rural Planning Principles:

- a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*

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- c) *recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- d) *in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- e) *the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- f) *the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- h) *ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

The use of the site as a depot is a more productive and sustainable economic activity than using this site for agricultural purposes, as the agricultural potential of the site is limited, as mentioned above.

The extension of this development will have limited impact on the agricultural production of the area, region or State, for reasons mentioned above.

The use of the rural land for this non agricultural purpose would result in a greater social and economic benefit for the property owners and the general community, than if the land was to be used for a agriculture purpose.

Council has set aside, industrial land, for industrial uses such as this and it is considered that a better balance in meeting the social, economic and environmental interests of the community would be achieved if the depot were to be located within an industrial area. However, Council has already granted approval for the site to be used for the purpose of a "Bulk Store" and the increase in the area of hard stand storage area, will have limited impact on the balance of the social, economic and environmental interests of the community.

The use of the site as a depot will have negligible impact on the biodiversity, native vegetation and water resources.

While the applicable planning principles are broad, it can be generally considered that the establishment of a depot for a scaffold business, being essentially a light industrial land use, is not suitable in a rural area and cannot be consistent with the planned development of the area. However, as the industry has been approved by Council, an application for an expansion of that business is not considered to be inconsistent with the provisions of the planning legislation.

Illegal Dumping

A report was presented to the Council meeting of 23 May 2013 which advised that a notice had been issued to the landholders requesting them to "Show Cause" why further legal action should not be taken against them, for the unauthorized use of the subject site as a "waste or resource management facility".

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This action resulted, from the applicant accepting delivery of six or seven truck loads of broken up concrete from the big prawn site. It was intended that this fill form part of the hard stand area the subject of this application.

At that meeting Council resolved to commence legal action against the applicant for the acceptance of waste at an unlawful waste facility as a separate matter.

Conclusion

Council at its meeting of 26 May 2011, resolved to grant consent to the establishment of a Bulk Store for a scaffold business on the site.

On 4 February 2013, Ballina Local Environmental Plan 2012 came into effect which prohibited Bulk Stores/Depots or similar within the applicable RU1 Zone. The current approved use is therefore an 'existing use' as defined in Section 106 of the EP&A Act 1979. Sections 107 & 108 of the EP&A Act 1979 and Clauses 41, 42 & 43 of the EP&A Regulations 2000, provide conditions under which an existing uses may be expanded. It is considered that this application complies with those requirements.

SEPP (Rural Lands) 2008 provides a series of broad rural planning principles. It is considered, that as the use is an existing use, the use is not inconsistent with the broad rural planning principles.

It is considered that the proposed extension of the hard paved area will have limited adverse impact on the agricultural viability of the subject site. The use of the site for a Bulk Store/Depot is prohibited under the provisions of BLEP 2012. However, as the site is an existing use this is not considered reason in itself for refusing the application.

The use has been operating for approximately two years, with no complaints. It should be noted that five adjoining residents have signed prepared letters of support for the proposed extension. The increase in storage area is requested as a result of the downturn in the building industry, which has seen the need to store material, which would normally be deployed on building sites, to be stored on the subject site.

Whilst a return to better times in the building industry, may mean that the area will no longer be required for the storage of additional scaffolding, approval of the current application will allow the area to be used on an on-going basis.

The applicant has advised that the increase in hard stand storage does not indicate a desire to increase the size of the business but such is largely irrelevant to the determination of the application. The site is not visible from Teven Road and generates no adverse impacts on the environment of the surrounding area.

Options

1. Council grant approval for the additional filled area of land to be used for an expanded storage area associated with the existing scaffolding business. This is the preferred option as per the information contained within this report.

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2. Council refuse the application to expand the storage area on the site for the storage of plant and equipment for a purpose prohibited by the provisions of Ballina Local Environmental Plan 2012. If this option were to be adopted the current compliance action will proceed which may require the removal of the unauthorised fill. This option is not recommended for the reasons outlined in the report including that specific legislative provision is made for the expansion of existing uses.

RECOMMENDATION

That the Section 96 1(A) application seeking to amend DA 2011/105 by the creation of an additional hard stand area to be used for the purpose of storage and the establishment of a new vehicular access onto Teven Road on Lot 20 DP 1051208, No 1188 Teven Road, Alstonville be **APPROVED** subject to the following conditions.

1. Condition 1.1 be amended to read
Development being carried out generally in accordance with the plans and associated documentation lodged by, or on behalf of, the applicant, including plans prepared by Amy Campbell, Drawing Nos. A-01 (Site Plan) Revision B, Dated 14 March 2013 and A-02 (Proposed Shed Plan) Revision B, Dated 8 April 2013, and the plan prepared by Wide Span Sheds, Reference No PB 1102061-1 (Building Layout), Dated 8 February 2011, as amended in red, except as modified by any condition in this consent.
2. Condition 1.5 be deleted
All scaffold equipment and associated materials are to be stored within the confines of the approved shed. No approval is granted for the storage of scaffold equipment and/or materials outside the shed either on the approved hard stand area or on any adjacent area.
3. Condition 2.4 be amended to read
The provision of stormwater controls on site shall be in accordance with the requirement of Section 3.9 Stormwater Management, of Chapter 2 General and Environmental Considerations of Ballina Development Control Plan 2012, and in accordance with the Site Stormwater Management Plan prepared by Newton Denny Chapelle, dated 7 March 2011, and amended Shed and Yard Plan dated 8 April 2013. This is to include the shaping of driveways and paved areas to drain to landscaped/vegetated areas.
4. New Condition 2.6A is to be included
Vegetation in the road reserve impairing sight distances to the south of the proposed access driveway is to be pruned. Approval from Council is to be sought in association with the application submitted under the provisions of S138 of the Roads Act 1993.
5. Condition 2.8 be amended to read
A landscape plan, prepared by a person competent in the field is to be submitted to Council for approval prior to the issue of Construction Certificate. The plan shall show the mature height, location, quantity and species of all plantings and should also give details of soil conditions and the planting and maintenance program. The plan is to incorporate a 7m grass buffer around the edge of the proposed

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hardstand area.

6. New Condition 2.9A is to be included
Prior to issue of a Construction Certificate where building work is proposed, payment to Council of non-refundable monetary contributions shall be made towards the provision of public services, infrastructure and amenities, which are required as a result of the development in accordance with the following contribution plans prepared under Section 94 of the Environmental Planning & Assessment Act, 1979 :

Contribution Plan/Development Servicing Plan	Adopted
Ballina Shire Contributions Plan 2008	23 October 2008
Ballina Shire Roads Contribution Plan 2010	25 February 2010
Ballina CBD Car Parking Contribution Plan	25 November 2004
Lennox Head Village Centre Car Parking Contribution Plan	12 February 2004
Ballina Shire Heavy Haulage Contribution Plan	27 October 2011

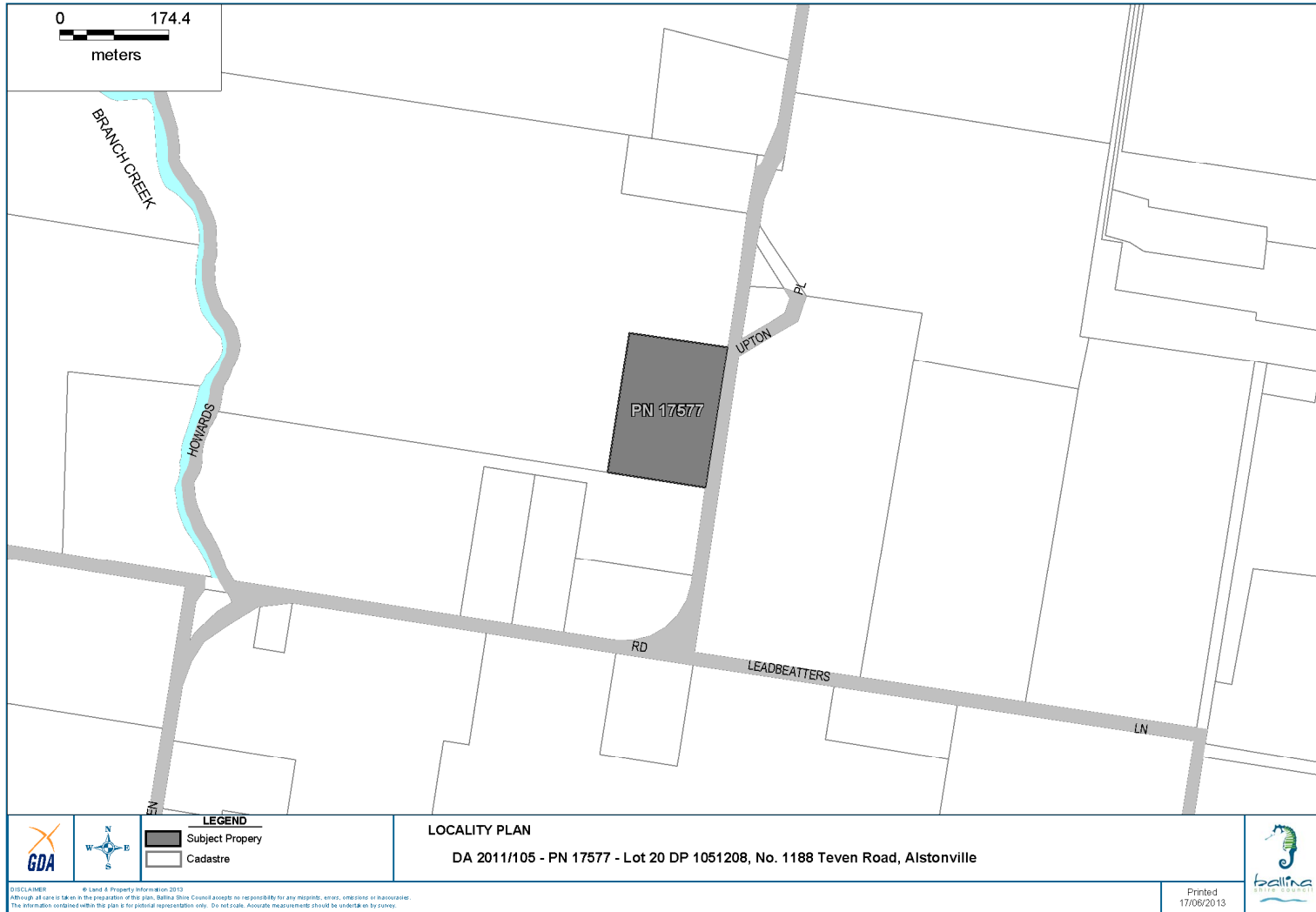
The Contribution Plans provide for the indexing of contribution amounts and are also subject to amendment. The contribution rates payable will be the rates that are applicable at the time payment is made. Copies of the Contribution Plans may be viewed at Council's Customer Service Centre, Cherry Street, Ballina or on Council's website www.ballina.nsw.gov.au.

7. Condition 3.6 be amended to read
The applicant shall ensure that any additional fill material imported to the site for the proposed development shall only be obtained from fill sources with approved testing. The supplier of the fill material must certify to Council at the completion of the construction of the development that the material was free of contaminants being natural or otherwise.
8. All other conditions remain applicable and valid.

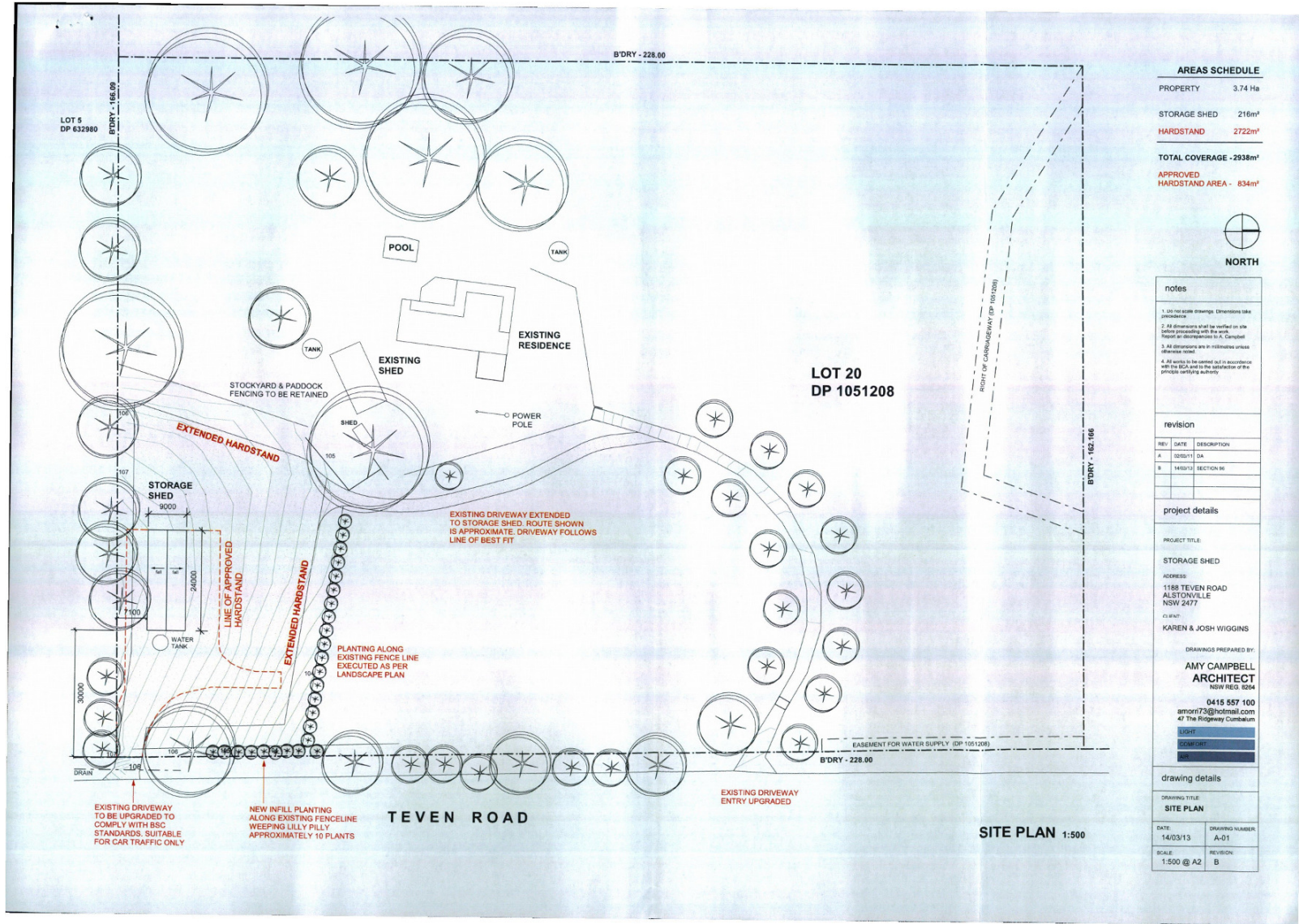
Attachment(s)

1. DA 2011/105 - Locality Plan
2. DA 2011/105 - Site Plan
3. DA 2011/105 - Submissions
4. DA 2011/105 - Council Meeting Report, May 2011

8.1 **DA 2011/105 - Section 96 - Bulk Storage.DOC**



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Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Dear Sir/Madam,

We wish to advise we have been made aware of the Section 96 application lodged on behalf of Wiggins Hire Pty Ltd with regard to the existing scaffold storage facility located at 1188 Teven Road, Alstonville.

We understand the proposal involves the following:

- Permission to store scaffold external to the existing shed
- An extended gravel storage area per the attached Shed & Yard Plan (Dwg A-02 Revision B)
- Alternate driveway access at the southern end of the property

Our property is in close proximity or adjacent to the land in question and we have no objection to the proposal in its current form.

Also, we have not been affected by the existing operations and do not believe the rural amenity of the area has been/will be compromised either visually or due to any noise attributable to the operation.

Regards,

Vanessa Bennett

Name

11.04.13

Date

1220 Teven Rd Alstonville NSW 2477

Address

Ballina Shire Council
PO Box 450
BALLINA NSW 2478

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- Alternate driveway access at the southern end of the property

Our property is in close proximity or adjacent to the land in question and we have no objection to the proposal in its current form.

Also, we have not been affected by the existing operations and do not believe the rural amenity of the area has been/will be compromised either visually or due to any noise attributable to the operation.

Regards,

WILLIAM PRETORIUS
Name 

11/4/2013
Date

68 HOWARDS RD ALSTONVILLE NSW 2477
Address

Ballina Shire Council
PO Box 450
BALLINA NSW 2478

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- Alternate driveway access at the southern end of the property

Our property is in close proximity or adjacent to the land in question and we have no objection to the proposal in its current form.

Also, we have not been affected by the existing operations and do not believe the rural amenity of the area has been/will be compromised either visually or due to any noise attributable to the operation.

Regards,

Alicia Rogers

Name

11.4.13

Date

9 Leadbeaters Lane Alstonville

Address

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8. Regulatory Services Group Reports

8.1 DA 2011/105 - Bulk Store - Scaffold Business

File Reference	DA 2011/105
Applicant	Newton Denny Chapelle
Property	Lot 20 DP 1051208 No. 1188 Teven Road, Alstonville
Proposal	The establishment of a bulk store for a scaffold business involving the construction of a shed and vehicular access for the bulk store of trucks and scaffold equipment.
Effect of Planning Instrument	The land is zoned 1(a1) – Rural (Plateau Lands Agriculture) Zone under the provisions of the Ballina LEP
Locality Plan	The subject land is depicted on the locality plan attached.

Introduction

Council is in receipt of a development application seeking consent for the establishment of a bulk store for a scaffold business. The proposal involves the erection of a 216m² shed, associated hardstand area and vehicular access for the purpose of storing scaffold, trucks and ancillary equipment.

The subject site is located within the 1(a1) – Rural (Plateau Lands Agriculture) Zone under the provisions of the Ballina Local Environmental Plan 1987 (BLEP). The applicant has made previous enquiries with Council on both this and another property in the 1(a1) Zone. Upon the request of the Council, this application is being reported to the Council for determination.

Whilst the establishment of a bulk store is permissible in the 1(a1) Zone, Council must take into consideration the consistency of the proposed development with the zone objectives, the appropriateness of the location of the bulk store in this rural locality, its impacts on surrounding land uses and whether or not the proposed development on land zoned for agricultural purposes is in the public interest.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The proposed development, being the establishment of a bulk store in the 1(a1) – Rural (Plateau Lands Agricultural) Zone, is classified as ‘advertised development’ for the purposes of the BLEP.

Consequently the development application was placed on public exhibition from 24 March 2011 to 22 April 2011. No public submissions were received during the exhibition period.

Applicable Planning Instruments

Ballina Local Environmental Plan 1987

The establishment of a bulk store is permissible with consent and is classified as advertised development in the table to Clause 9 of the BLEP. The objectives of the 1(a1) zone are as follows:

- A *The primary objectives are:*
 - (a) *to regulate the subdivision and use of land within the zone to ensure that:*
 - (i) *land actually used for purposeful agricultural production, particularly horticulture, or*
 - (ii) *land having the potential for purposeful agricultural production, particularly for horticulture, is developed in a manner to optimise its production potential, and*
 - (b) *to enable development which is ancillary to the agricultural use of land within the zone (particularly dwelling-houses, rural workers’ dwellings and rural industries) where such facilities do not significantly reduce the production potential of the subject land or other land in the locality.*
- B *The secondary objectives are to ensure that development within the zone:*
 - (a) *maintains the rural character of the locality, and*
 - (b) *does not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.*
- C *The exceptions to these objectives are:*
 - (a) *development of land within the zone for public works and services, outside the parameters specified in the primary and secondary objectives, subject to the impact on agricultural resources being minimised, where practical, and*
 - (b) *development of land for extractive resources extraction.*

The applicant, in the Statement of Environmental Effects submitted with the development application has sought to address how the proposed bulk store will be consistent with the objectives of the 1(a1) zone.

The subject site comprises an area of 3.742 hectares and contains an existing dwelling house, small shed and swimming pool. Given the size of the allotment and the location of the dwelling and ancillary structures, the subject land is not currently being utilised for agricultural purposes. It is considered given the constraints of the site that it does not readily lend itself to productive or economically viable agricultural activity.

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It is also considered, however that the establishment of the bulk store and associated hardstand area as proposed in this development application does not result in development that optimises the potential for purposeful agricultural production, particularly horticulture, as specified in Objective A(a) above.

The proposed bulk store has been sited so as to minimise its impacts on current land uses being undertaken on adjoining parcels. The applicant has also provided detailed information emphasising the low impact and small scale of the proposed development.

Notwithstanding this, Council must assess the application not only on the merit issues of minimising impact and preserving amenity but also on the statutory requirement that the development must be consistent with the objectives of the zone. Having specific regard to the zone objectives, the proposed development is not considered to be "ancillary to the agricultural use of land within the zone" as specified in Objective A(b) as the proposed use, regardless of its perceived impact and scale, cannot be considered a use that is ancillary to agriculture.

As noted, the proposed bulk store has been sited to minimise the impact on adjoining properties. The existing established vegetation in the vicinity of the proposed bulk store assists in the minimisation of the likely impacts of what is essentially a light industrial development in a rural zone. Notwithstanding the above, in general terms it is considered that the establishment of a bulk store of this nature (being for a scaffold business that is not necessarily associated with rural land uses) does not seek to maintain the rural character of the locality.

When considered on its own, the proposed bulk store will not likely result in the creation of unreasonable and uneconomic demands for the provision or extension of public amenities and services.

Concern is raised however as to the cumulative impacts and precedents that would be set if this development is supported. In consideration of the above, the proposed development is therefore considered to be not consistent with Objective B of the 1(a1) zone.

The proposed development does not comprise development that is an exception specified in Objective C.

Having regard for the above, it is considered that the proposed development is not consistent with the objectives of the 1(a1) – Rural (Plateau Lands Agriculture) Zone.

State Environmental Planning Policy (Rural Lands) 2008

The subject land, being within the 1(a1) zone under the BLEP is subject to the provisions of this SEPP.

Clause 2 contains the aims of the SEPP which are:

- (a) to facilitate the orderly and economic use and development of rural lands for rural and related purposes,

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- (b) to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,*
- (c) to implement measures designed to reduce land use conflicts,*
- (d) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*
- (e) to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.*

The proposed development, involving the establishment of a bulk store for a scaffold business is not considered to be an orderly or economic use or development of rural lands for rural and related purposes. Consideration has been made with regard to land use conflict and the expected noise generated through the loading and unloading of equipment from trucks. Although the applicant has stated these activities will be minimised to reduce impacts, it is considered that this aspect of the development will be difficult to regulate and has the potential to result in unreasonable land use conflicts.

In consideration of the above, the proposed development cannot be considered to be consistent with the aims of this SEPP.

Clause 7 of the SEPP also contains a series of Rural Planning Principles as follows:

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

It needs to be considered whether or not the establishment of a bulk store for a scaffolding business and associated hardstand area is a productive and sustainable economic activity in a rural area. Concern is raised over the impacts the proposed development will have on the agricultural potential of the subject land and the cumulative impacts of the precedent set should this development be supported on rural land.

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Council has set aside, through land use planning controls, certain areas of the Shire that it considers suitable for particular land uses. Thus it also needs to be considered whether or not the proposed development, should it be supported, will achieve a balance in meeting the social, economic and environmental interests of the community.

While these planning principles appear somewhat ambiguous, it can be generally considered that the establishment of a bulk store for the establishment of a scaffold business, being essentially a light industrial land use, is not suitable in a rural area and cannot be consistent with these planning principles.

North Coast Regional Environmental Plan

Clause 12 of Division 1 of the NCREP reads as follows:

The council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land.

The impacts of the proposed development on the use of adjoining or adjacent agricultural land have been considered in the assessment of this development proposal. It is considered that while efforts can be made to minimise and mitigate against the amenity impacts of the proposal on adjoining and adjacent properties, the proposed development, in general, represents an industrial type land use that should not be supported on rural land and has the potential for land use conflicts to be generated.

The proposal will not result in any substantial loss of prime crop or pasture land.

Draft Ballina Local Environmental Plan 2010

The Draft Ballina Local Environmental Plan 2010 applies to the subject land. The draft BLEP was publicly exhibited from 15 March to 4 June 2010.

The subject site is located on land proposed for inclusion in the RU1 – Primary Production zone.

'Bulk store' is not a defined land use in the Draft BLEP. Under the Draft BLEP provisions, the definition of the proposed development is 'storage premises' which is:

a building or place used for the storage of goods, materials, plant or machinery for commercial purposes and where the storage is not ancillary to any business premises or retail premises on the same parcel of land.

Storage premises is not listed as a permissible land use in the RU1 zone and is therefore prohibited development on the subject land in accordance with the provisions of the Draft BLEP.

Report

The development application for the establishment of a bulk store for a scaffold business has been assessed against the heads of consideration as contained in Section 79C of the *Environmental Planning and Assessment Act 1979*. As detailed above, it is considered that the proposed development is inconsistent with the objectives of the 1(a1) – Rural (Plateau Lands Agriculture) Zone under the provisions of the *Ballina Local Environmental Plan 1987*.

The proposal is also inconsistent with the planning provisions specified in both the *North Coast Regional Environmental Plan, State Environmental Planning Policy (Rural Land) 2008* and *Draft Ballina Local Environmental Plan 2010*.

The planning instruments referenced above provide strong development controls that seek to preserve and maintain the amenity and agricultural viability of rural land and seek to prevent the incursion of non-compatible land uses into rural areas. In assessing the proposed development against these controls it has been found to be generally inconsistent with the preferred land uses and does not maintain the desired character preferred for rural land in the shire.

The proposed bulk store is also considered to have the potential to create an unreasonable impact on the rural amenity of the locality. The proposed land use, being a bulk store for a scaffold business, is not considered to be a compatible land use in the 1(a1) Zone and is more suited to an industrial zone.

The development application has been assessed by Council's development engineer having particular regard to the proposed access driveway off Teven Road. The assessment of this aspect of the development has revealed that any proposed driveway on the boundary of the site with Teven Rd can only achieve a sight distance of less than 200 metres due to the existing dip and blind spot.

The required safe intersection sight distance (SISD) is 270 metres. The existing driveway to the dwelling on the site achieves a sight distance of 240 metres, which is still less than the required 270 metres as specified in the *Austrroads* guide. Any proposed driveways for this site accessing Teven Road cannot be supported due to inadequate sight distance constraints.

The existing driveway servicing the dwelling does not comply with the SISD requirements and it is considered undesirable for trucks to enter Teven Road from this location. Therefore, the application as lodged cannot be supported in this regard given the road safety issues with the proposed road access.

Notwithstanding the abovementioned access issues, should a favourable consideration be given to the use of the subject land as a bulk store for a scaffold business, the risk needs to be considered with regard to the land use precedent this would set and the potential erosive effects this precedent may have through the encouragement of similar land uses in rural zones.

Concern is also raised with regard to potential economic impacts where rural land is optimised for the incursion of non-rural uses and the how this may affect property values where rural land may be seen as more viable for non-rural land uses. Consideration also needs to be given to whether allowing this type of land use in a rural zone is equitable when other operators who seek to comply with the relevant land use controls may view this development, should it be supported, as having an unfair advantage.

Having regard to the above and the assessment of the proposal against the relevant regulatory controls, the proposed development is not supported and is recommended for refusal.

Conclusion

The subject application is seeking development consent for the establishment of a bulk store for a scaffolding business on rural land within the BLEP 1(a1) – Rural (Plateau Lands) Agriculture Zone. In assessing the proposal, it is considered that it is inconsistent with the zone objectives and an incompatible land use in a rural area.

This position is further supported by additional planning instruments and development controls. The engineering assessment of the proposal reveals that the proposed access to the development is unsatisfactory. Having regard for these issues, the proposed development is not supported. However, should favourable consideration be given to this proposal, Council must also consider the precedent it may set, the cumulative impacts and flow on effects in the allowing of a non-rural land use in a rural zone.

Based on the above, the development application is recommended for refusal. This conclusion has been reached, not only in relation to the assessment of the merits of the proposal, where amenity impacts and scale of the proposal are considered, but also on the statutory requirements of development being consistent with the BLEP 1(a1) zone objectives and relevant provisions of applicable statutory planning instruments.

Having regard to the outcomes of the assessment undertaken as detailed above, Council has the following options with regard to determining the subject application:

Option 1

That Council REFUSE the development application, in consideration of the applicable zone objectives, the provisions of the *North Coast Regional Environmental Plan*, the provisions of *State Environmental Planning Policy (Rural Land) 2008*, the provisions of the *Draft Ballina Local Environmental Plan 2010* and the inadequacy of the proposed access arrangements, or

8.1 DA 2011/105 - Bulk Store - Scaffold Business

Option 2

That Council APPROVE the development application subject to standard conditions of consent for this type of development, including an appropriate condition requiring a further review of the proposed access arrangements off Teven Road. Should Council elect to proceed with this option, it must be satisfied that the proposed development is consistent with the objectives of the 1(a1) – Rural (Plateau Lands Agriculture) Zone under the provisions of the *Ballina Local Environmental Plan 1987*, is consistent with provisions of Clause 12 of the *North Coast Regional Environmental Plan*, is consistent with the aims (Clause 2) and Rural Planning Principles (Clause 7) of *State Environmental Planning Policy (Rural Land) 2008* and is consistent with the provisions of the *Draft Ballina Local Environmental Plan 2010*.

Option one is the recommended approach for the reasons outlined in this report.

RECOMMENDATIONS

That DA 2010/216 for the establishment of a bulk store for a scaffold business involving the construction of a shed and vehicular access for the bulk store of trucks and scaffold equipment on Lot 20 DP 1051208, No. 1188 Teven Road, Alstonville be **REFUSED** for the following reasons:

1. The proposed development is inconsistent with the objectives of the 1(a1) – Rural (Plateau Lands Agricultural) Zone of the *Ballina Local Environmental Plan 1987*
2. The proposed development is inconsistent with the provisions of the *North Coast Regional Environmental Plan*
3. The proposed development is inconsistent with the provisions of *State Environmental Planning Policy (Rural Land) 2008*
4. The proposed development is inconsistent with the provisions of the *Draft Ballina Local Environmental Plan 2010* and
5. The proposed access arrangements to the site from Teven Road are inadequate and do not meet engineering standards.

Attachment(s)

1. Locality Plan
2. Site Plan
3. Shed Plan

DA 2011/105 - Bulk Store - Scaffold Business (Wiggins Hire Pty Ltd)





Date: 1 August 2013
Our Ref: 11/033

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Dear Sir,

**Re: Section 96(1A) - Development Application 2011/105
Lot 20 DP 1051208
1188 Teven Road, Alstonville.**

Newton Denny Chapelle has been instructed to submit further information with respect to the Section 96(1A) Application lodged with Ballina Shire Council to amend conditions of consent associated with the design and operation of the approved bulk store (scaffold business) located at 1188 Teven Road, Alstonville.

In response to matters raised during the Council meeting and subsequent discussions with Council staff, Karen & Josh Wiggins have reviewed the operational characteristics of the business and have instigated the following amendments to the site layout reported to Council in June 2013.

1. A 20% reduction (159m²) in the land area designated for storage. The reduced storage area has been more clearly defined on the site as reflected on the revised site plan.
2. The reduction in the storage area demands for the business results in the ability to designate a greater portion of the site area for landscaping and grassed areas. In this respect, the grass area between the alignment of the hardstand and Teven Road is now increased from 5 metres to 14.5 metres.
3. Additional grassed area has been incorporated to the western end of the storage area resulting in an overall grassed area of 1,652m² which represents 40% of the business envelope which is located within a 4,106m² fenced area.
4. Additional landscaping has also been afforded to the southern boundary so as to address potential sight lines from Teven Road for vehicles travelling north on Teven Road. The operations of the business will not be visible from Teven Road.

The revised site layout provides a total hardstand area (ie. driveway, storage area and shed) of 2,454m² which represents 6.5% of the total land area of the Wiggins property. The modification to the layout attached to this letter provides the opportunity for the business to continue operating in a manner outlined to Council both within the NDC Section 96 submission and Mrs Wiggins deputation to Ballina Shire Council. Importantly, the amended site coverage will achieve two benefits, being the ability for the business to operate in a manner which adheres to OH&S requirements, and secondly the ability to provide additional grass cover and screening which will address the visual amenity of the land when viewed from the public domain.

JOHN NEWTON B. Surv. M.I.S. Aust. **TONY DENNY** B. Surv. (Hons) M.I.S. Aust. **DAMIAN CHAPELLE** BTP CPP
Office: Suite 1, 31 Carrington Street, Lismore, Postal Address: PO Box 1138 Lismore NSW 2480
Phone (02) 6622 1011 Fax (02) 6622 4088 Email office@newtordennychapelle.com.au
Also at: Cassino Court, 100 Barker Street, Casino NSW 2470 Phone/Fax (02) 6662 5000

As Council would be aware, the business enjoys existing use rights as a result of the Ballina LEP 2012 being gazetted. Accordingly, the scope for this proposal to set a precedent for other storage businesses is not achievable. The proposal was approved under the Ballina LEP 1987 as a land use which was nominated as being permissible with the consent of Council. The gazettal of the Ballina LEP 2012 removes the precedent argument which was in existence whilst ever the Ballina LEP 1987 was operational upon rural zoned land.

The proposed modification to the existing business is well supported by the local community. That is, Council has been provided letters of support from adjoining residents, whilst no submissions were received during the public exhibition period.

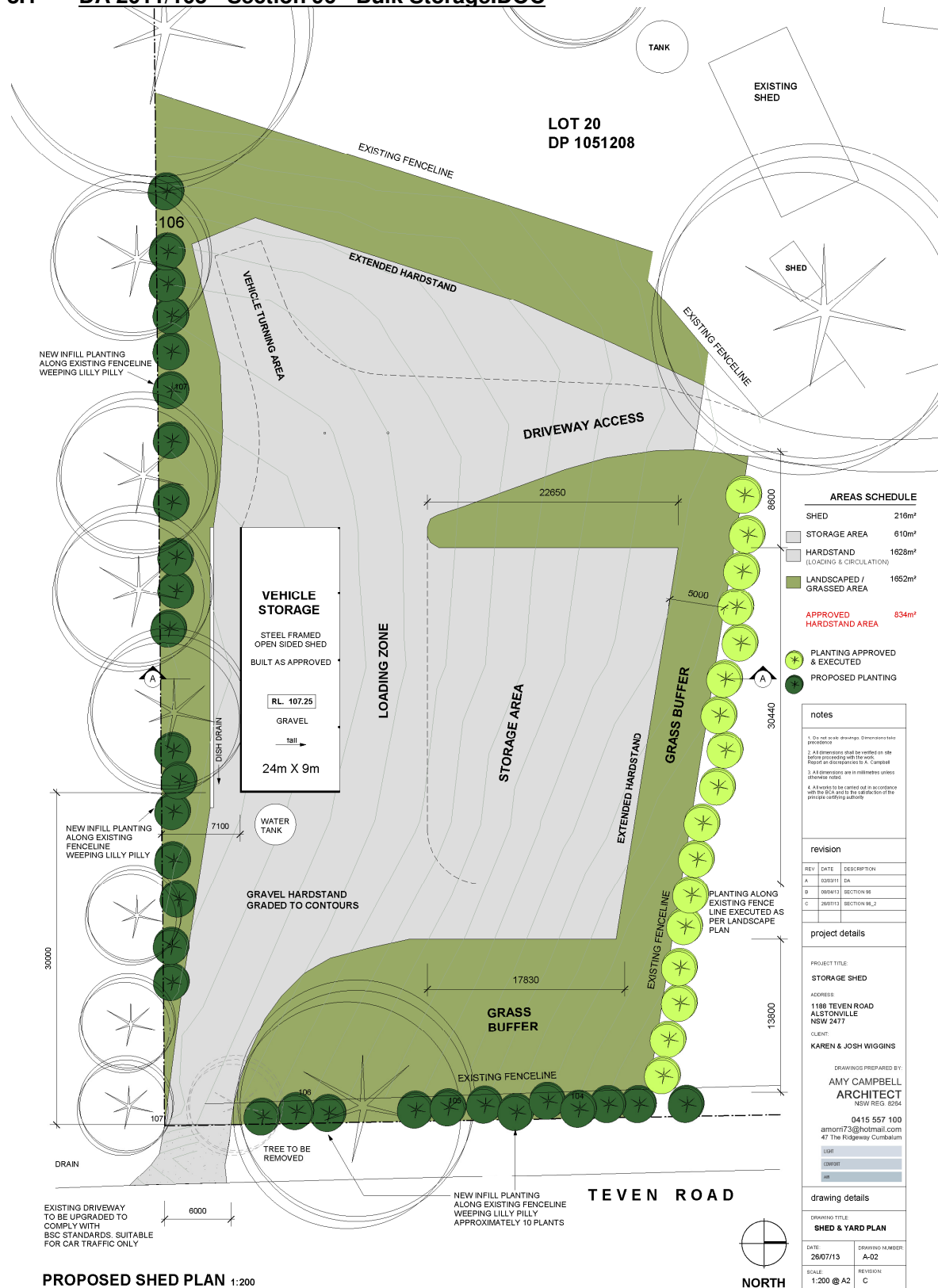
In conclusion, the Wiggins family are a local business who contribute to the local community through sponsorship of activities. The business has provided services to such organisations as the Westpac Rescue Helicopter and the Gromfest Surf Competition at Lennox Head to name just a few events where the business has assisted. Letters prepared by the aforementioned organisations are provided to Council in support of the business.

We trust this is the necessary information you require at this time. However, should you have any questions, please do not hesitate contacting Damian Chapelle of this office.

Yours sincerely,
NEWTON DENNY CHAPELLE



DAMIAN CHAPELLE
Town Planner. BTP. CPP.



PROPOSED SHED PLAN 1:200

LE-BA Boardriders Club Inc

29 July, 2013

To whom it may concern

This is a letter of support for Wiggins Scaffolding, Alstonville. By way of context, Wiggins Scaffolding has been a major sponsor of the Skullcandy Oz Grom Open – presented by Le-Ba Boardriders for the past two years.

When I first approached the owner, Josh Wiggins to provide the structure for our event (in April 2012), he did not hesitate to throw his full support behind the concept. Josh stated that he wanted to support local groups and this was his way of putting back into the community.

Nothing was a problem for Josh and he was open to all our concepts and ideas for the structure. Having a structure similar to those at professional surfing contests gave our event immediate recognition from the surfing fraternity. Contestants, family members and spectators were blown away by the impressive structure and the 'pro look.'

The hours that Josh put into planning the structure, liaising with council staff to ensure we met our tight deadline really captured his sense of community. I would continually ask Josh "are you sure you want to do this?" he would reply "no worries mate, I love it."

Wiggins had a team of over eight men who constructed and then dismantled the structure over five days. Wiggins covered all the related costs including labour and floating scaffold on a semi trailer. A considerable contribution from a small family owned and operated business.

After the success of last years event and having full knowledge of the incredible amount of time and money Wiggins put into it I was nervous about asking Josh to sponsor the event again. Before I could ask Josh he said "you are going to use us again next year aren't you?"

This years event was even bigger than last years. Wiggins postponed a big job in Brisbane to ensure our structure was built in time for the builders to fit it out. Without the support of Wiggins we could not run this premier surfing event – the associated costs would be prohibitive. The Skullcandy Oz Grom Open is run by a community organisation and supported by great community businesses like Wiggins. Our club and our community are extremely grateful for their kind contribution.

Yours sincerely,


Tony O'Brien
Secretary
Le-Ba Boardriders



60 Brunswick Street
PO Box 822
LISMORE NSW 2480
T 02 6627 4444
F 02 6621 4288
E admin@helirescue.com.au

WWW.HELIRESCUE.COM.AU

Ballina Shire Council
PO Box 450
BALLINA NSW 2478

29 July 2013

To Whom It May Concern,

Wiggins Scaffolding Pty Ltd have made both labour and materials available to Westpac Life Saver Rescue Helicopter, as inkind sponsorship for the 2012 & 2013 Ballina to Byron Bay Charity Walk & the upcoming Rescue Rumble Terrain Training Challenge.

As a not-for-profit organisation operating in the Northern Rivers, we understand the value of community support and would like to formally note our support Wiggins Scaffolding in their current application.

We understand that the application seeks to expand an existing area for the storage of scaffolding equipment adjacent to the shed already in place at Teven Road, Alstonville. We are aware that the applicant has also taken care to consult with the residents of all neighbouring properties and has attempted to address any foreseeable concerns local residents.

In supporting this organization, Ballina Shire Council will be supporting a small family business who contribute to many organizations in the local community, ours being just one of them.

We value Wiggins Scaffolding's continued support of Westpac Life Saver Rescue Helicopter Events and recognize their contribution to our organization and the local community.

Please do not hesitate to contact me if you have any queries.

Regards,

A handwritten signature in black ink, appearing to read "Kellie".

Kellie Pinkerton
Events Coordinator
Westpac Life Saver Rescue Helicopter
T 02 6627 4444 F 02 6621 4288 M 0407 668 398
E events@helirescue.com.au
60 Brunswick Street LISMORE NSW 2480
Postal Address: PO Box 822 LISMORE NSW 2480
www.helirescue.com.au



Operated by NORTHERN REGION SLA HELICOPTER RESCUE SERVICE Pty Ltd ABN 25 003 171 373



Tuesday 13 August, 2013

Paul Hickey
General Manager
Ballina Shire Council

Via email: phickey@ballina.nsw.gov.au

Dear Paul,

RE: DA 2011/105 - Section 96 - Bulk Storage.

As you know, the role of the Ballina Chamber of Commerce is to represent and support the interests of local businesses in a variety of forums. We support initiatives to improve the local business environment and foster business growth, which in turn provides confidence in the local economy and the community as a whole.

As such, we would like to support Karen & Josh Wiggins in their current s.96 application to Council. The application seeks to store scaffold in a designated, outdoor storage area, rather than in the existing shed as prescribed under the current conditions.

The board is of the view that this application should be approved, in accordance with Council staff's recommendations, for a number of reasons:

- The proposed use is permissible under the planning regulations;
- the use of the site for storage of scaffolding has been approved under a previous development consent;
- the proposal is not out of character with the rural activities that would typically occur within the locality;
- the impacts of the development are minimal;
- there do not appear to have been any objections to the proposal. In fact, the applicants have advised, and are supported by, all surrounding residents.; and
- the proposal will help to sustain a local business that provides important services to our local economy

We understand first-hand the difficulties facing small businesses during uncertain, economic times, particularly in the context of the local building and construction industry. By allowing this variation to their existing consent you will allow both safety and efficiency improvements for a small family business, a local employer and community members who are active in supporting many local causes and events.

We wish Karen & Josh every success with their application and the future operations of their business.

As stakeholders it is crucial that we work together to support our local small businesses if we are to have any hope of a thriving local economy.

Kind Regards,



Nadia Elliott-Burgess
Executive Officer
On behalf of the Board of Management
Ballina Chamber of Commerce and Industry Inc.

Ph: 6681 5049
Mob: 0438 484 403

PO Box 444 Ballina NSW 2478
Ph 02 6681 5049 Fax 02 6686 5810
Mobile 0438 484 403
Email info@ballinachamber.com.au
www.ballinachamber.com.au