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Teakwood Dve
Alstonville NSW 2477

2 November 2013

Mr Rod Willis
Group Manager
Development and Environmental Health
PO Box 450
Ballina NSW 2478

**Re: DA2013/385 – Mr W.R. Moss and Mrs J.E. Burrows-Moss, Lot 1, DP 856017,
59 Teakwood Dve, Alstonville, Conversion of an existing shed to a dwelling.**

As both neighbours and residents of Teakwood Dve, Alstonville, we wish to object to the above development application (DA) for the reasons outlined below. We the undersigned do not consider that the proposal is in keeping with the intended character and design of the rural residential subdivision of Teakwood Dve as required in DP856017 for this subdivision. We believe the DA is in breach of several covenants in DP856017 which are explained in Attachment A.

We note that Council's website shows no DA for the additions made to the perimeter of the storage shed post its original construction in 1999 or thereabouts. The owners of this property completed extensive additions to the entire perimeter of this shed at the time of "temporary occupancy" several years ago, which has essentially doubled the size of the footprint of the shed. This was done while their partially built residential dwelling was subject to lengthy legal proceedings.

As neighbours, we were sympathetic to the owners' situation at the time, and did not object to the temporary occupancy of the original shed. We believe the subsequent additions to the shed that followed were in contradiction to this temporary arrangement, but assumed this would be dealt with under the terms of the "temporary occupancy" approval, whereby the shed would be returned to its original size, state and footprint.


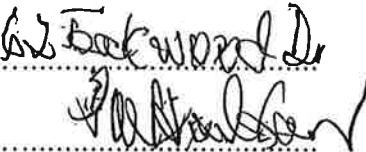




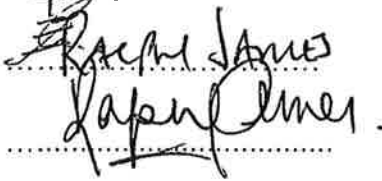

On compassionate grounds, Teakwood Drive residents did not object to the temporary occupancy on the understanding that after the conclusion of legal proceedings, a residential dwelling, either the completion of the partially constructed dwelling or an entirely new residence, would be constructed, which would also comply with building codes and the subdivision covenants in DP856017. For more than a decade, during the lengthy legal disputes, residents have been patient with the impact the unfinished dwelling, subsequent demolition and additions to the shed have had on them and the aesthetics of the street. However, it now appears the proponents had every intention of using the shed as a primary dwelling with no intention of completing their partially built house or constructing a new dwelling on the same property.

and is not in the best interest of the other residents in this street. The undersigned and the other residents of Teakwood Dve decided to move to this street and build our dwellings and sheds in compliance with the covenants in DP856017 as they were generally superior to the average in the Shire and were in keeping with the intended quality residences intended for this subdivision. As such, the undersigned and other residents of Teakwood Dve paid a premium for the land and associated dwellings when initially purchasing our respective properties. We therefore believe the conversion of this storage shed to a residence on a permanent basis, will have a direct negative impact to the value of the street and all the individual properties.

We ask that Council consider this submission in its entirety, including Attachment A, in determining this DA and uphold the development standards outlined in DP856017 and other relevant building standards that are applicable to this rural residential subdivision.

We also note that we have no reasons to disclose any reportable donations or gifts to any local Councillor or to Council as outlined in your letter dated 22 October 2013.

Yours sincerely

<p>HANK HOEKSTRA  76 TEAKWOOD DR.</p>	<p>PAUL R HOULAHAN  62 TEAKWOOD DRIVE</p>	<p>JEANETTE HOULAHAN 62 TEAKWOOD DRIVE J. Houlahan</p>
<p>Sarah Fairfull  63 Teakwood Dve</p>	<p>PAUL FAIRFULL  63 TEAKWOOD DVE</p>	<p>BILL SILVESTER 72 TEAKWOOD DVE </p>
<p>75 Teakwood Dve Anne Nalder </p>	<p>48 Teakwood Drive  Rachel James</p>	<p>48 Teakwood Drive Sue Austin </p>

ASH WOOLLEY
A woolly
71 TEAKWOOD DR

Sue Woolley
Woolley
71 Teakwood Drive

Manfilius
77 Teakwood Drive
Alstonville 2477

Attachment A:

We the undersigned do not consider that the proposal is in keeping with the intended character and design of the rural residential subdivision of Teakwood Dve as outlined in DP856017 for this subdivision and noted:

- Clause 10(a) notes that only one colourbond shed can be erected on any lot – the design, type of construction and location of such shed to be approved by Mr and Mrs Hoeskstra and Ballina Shire Council. As objectors to this proposal, we note that there are currently two colourbond sheds constructed on the proponent's property and contest that neither have been approved in full in accordance with this instrument (DP856017) or any other approval as permanent sheds or dwellings on this property.
- Clause 10(m) states that no shed or any outbuilding erected or placed on any lot of the subdivision shall be used as a permanent or seasonal dwelling. We the undersigned argue that this DA is in direct conflict with this clause as it proposes to allow a shed to be used as a permanent dwelling.
- Clause 10(q) notes that no dwelling shall be occupied unless the access to such dwelling is by way of sealed access road, driveway or carriageway of hot mix, bitumen, asphalt, concrete or similar material as approved under this clause. As objectors we note that the driveway to the proposed dwelling does not meet this requirement at all.

As neighbours and residents of the subdivision – we have complied with this requirement for the access road to our residence which significantly added to the cost of our residential dwelling during their construction. We believe it is therefore unfair that our neighbours should not have to comply with this clause for their dwelling.

Re W.R. Moss and J.E. Burrows-Moss DA2013/385

This objection is intended to be supplementary to that lodged by the bulk of the residents of Teakwood Drive.

This objection is focused on the Restriction as to User created pursuant to Section 88B of the Conveyancing Act in respect of DP 856017. It is also focused on the zoning of the area.

It is recognised that Ballina Shire Council is not required to uphold or enforce restrictive covenants over land. On the *Ballina Development Control Plan 2012*, it states that Council is not required to uphold or enforce these additional controls in accordance with Clause 1.9A of the BLEP 2012.

This is supported by *Coshott's Case* which states affirms that s28 of the *Environmental Planning and Assessment Act* allows planning instruments such as LEP's to override, amongst other things, restrictive covenants.

Therefore, whilst a submission may be made to Council objecting to the change of use and may be supported by the existence of the restrictive covenant, Council is not restricted in its approval of the DA by the restrictive covenant.

Nevertheless the existence of a Restriction as to User or a restrictive covenant can be used as persuasive argument in advancing an objection.

By the 88B instrument the developer (Mr and Mrs Hoekstra) is the authority that has power to vary or modify whilst ever they own a lot in the subdivision. If they no longer own a lot in the subdivision then the power to modify falls to Council.

Mr and Mrs Hoekstra have not consented to the variation or modification of the instrument and, indeed, they have specifically objected to the application.

The intent or purpose of the instrument must, if it is submitted, be considered by Council when considering the objection and determining the application.

The application proposes a development which is specifically contrary to terms (a), (m) and (q) of Restriction 10. The terms of those Restrictions are abundantly clear and have been put in place for a reason which will be obvious to Council and which has been addressed in the joint residents submission.

Council should not depart from standard set by those Restrictions and should apply the terms of the restrictions consistently. To do otherwise would permit and encourage ad hoc development.

The application relates to a property in a Zone RU1 "Primary Production". This does not permit secondary dwellings under the SEPP (Affordable rental housing)

Consistent with the North Coast REP which requires only **attached** dual occupancies the Ballina LEP requires the same (with development consent).

Approval of the application has the potential to create a situation where, in the future, a second dwelling might be constructed on the property thereby offending zoning.

Should Council consider granting of development consent the applicant ought be required to surrender any dwelling entitlement beyond that relating to the shed.

From Ralph James
and Sue Astri