

Tuesday 14 December 2021

**To:** Northern Regional Planning Panel  
**From:** Lydia Charman  
**Subject:** Development Application DA21/0244 - alterations and additions to existing educational establishment (NRPP) at Lot 219 DP 755740; No. 4-10 Heffron Street TWEED HEADS SOUTH  
**Reference:** DA21/0244/ PPSNTH-92

32420

[DAMemo]

Dear Panel,

Thank you for your feedback on Council's assessment report for the above application. Please see below Council's response to a number of questions in relation to the assessment report and draft conditions for DA21/0244/PPSNTH-92. Attachment 1 to this addendum memo is a complete suite of conditions.

The below is considered to address the concerns raised. The application is considered to have been assessed in accordance all applicable legislation. The addition of this memo as an addendum to the assessment report ensures clarity on all matters and conditions of consent.

## 1. Contamination

pp8-9 state that "*the land is **not contaminated** and is suitable for the proposed development*". Again this seems at odds with the commentary at pp.47-48 and related conditions 12 and 13??

### Response:

Upon review the following is advised:

- **Clause 7 of SEPP No 55 – Remediation of Land.** Clause 7 states that a consent authority must not consent to the carrying out of any development on land:
  - (a) *it has considered whether the land is contaminated, and*
  - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
  - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The total recoverable hydrocarbons (TRH) contamination encountered in in some surface soils and groundwater are not considered to present a significant health risk.

However a Pre-Demolition Testing Report submitted with the application detailed elevated concentrations of Aldrin and Dieldrin in boreholes 5, 6 and 7 (all from Building D - Library) that exceeded HIL A in shallow soils 0-01.5m below ground level.

The library will be repurposed as an outdoor play area. As a result, a Detailed Site Investigation and Remediation Action Plan (Rev2) for Tweed Heads South Public School, 10 Heffron Street, Tweed Heads South prepared by ENV Solutions Pty Ltd dated 20 October 2021 (Job Number: 216191) has been submitted to delineate the lateral and vertical extent of soil contamination in this area and set out remedial requirements for the ongoing use as a school. The contaminated material is limited to the shallow soils to 0.5m below ground level across the 280m<sup>2</sup> footprint of the library building. A remedial action plan has been presented to remove this material and validate the area in accordance with NSW EPA statutory guidelines. ENV considers the site will be made suitable for the proposed school redevelopment

Council Officers are satisfied that the proposed development will be adequately remediated and will be made suitable for the intended purpose as a school prior to the commencement of work. Accordingly, the provisions of clause 7 of SEPP 55 are considered satisfied.

## 2. Various conflicting statements about School capacity arising from development and related TfNSW / parking consideration under Education SEPP [my emphasis in quotes].

At pp.14-15 there is this detailed statement:

*"THSPS has an enrolment capacity of 330 students, however, there are currently approximately 250 students. While SINSW have not identified any growth in the short to medium term (up to 10 years), there is potential growth in the long term (greater than 10 years). Accordingly, the subject application seeks approval for the maximum operating capacity of the school to allow for long term growth of up to 500 students. This represents an increase of 250 students relative to the existing operations and enrolments and an increase of 170 students compared to the current capacity."*

Also:

*"The SEE advises that an additional seven (7) teaching staff will be required to accommodate the additional classrooms created by proposed Buildings 1 and 2. This represents an increase of 27% relative to the existing number of teaching staff (29), resulting in a total of 36 teaching staff."*

Yet at p.9 the report states:

*"The subject application **does not** increase student numbers, accordingly, is not considered as traffic generating development under Clause 57 of the Educational Establishments and Child Care Facilities SEPP."*

Also at p.81 is the following statement attributed to TfNSW (we don't appear to have their response?): *"However it is noted that the development proposed is **not intended to increase student numbers and as such, it is agreed that it is not Traffic Generating Development under clause 57 of ESEPP.**"*

Yet at p.63 is the following contradictory statement in relation to the ESEPP:

*"The proposed development is expected to increase the traffic generation rates from the use. Accordingly, the application was referred under Clause 57 to Transport NSW, the following was advised:*

*TfNSW understands that the development has been referred under the ESEPP to construct 2 new classrooms; make amendments to pedestrian entrances, and to upgrade the kiss and drop facility. **There is to be an increase in student & staff numbers (some 170 additional students and 7 additional staff) with this development proposal, and as such, the development is Traffic Generating Development under clause 57 of ESEPP***".

It seems clear from the p.14 / 15 comment the DA will increase the potential capacity as well as the teacher numbers at the School, noting that cl.57 of the ESEPP for referral to TfNSW is triggered when there are new premises being proposed under which a School will be **"able to accommodate 50 or more additional students"**.

I can't understand why half the comments say it isn't TGD and the other half say it is. Either way, and especially in view of this confusion, I think we should be able to see just what TfNSW had to say.

Further, p.44 indicates no new parking is proposed, yet p.64 states that 7 new spaces are to be provided, commensurate with the proposed increase in teachers. P. 67 suggests that the proposed (revised) kiss n ride facilities have the potential to cater for future increase in student population, but we are not told what the relevant DCP standards are for primary schools.

## Response:

Upon review the following is advised:

Page 9:

- **Clause 57 of the SEPP (Educational Establishments and Child Care Facilities) 2017.** Clause 57 requires the consent authority to consider accessibility of the site as well as traffic / transport impacts associated with the development. The subject application will see a potential increase student numbers of up to 170 students, accordingly, is considered as traffic generating development under Clause 57 of the Educational Establishments and Child Care Facilities SEPP;

Page 81:

## (d) Any submissions made in accordance with the Act or Regulations Transport for NSW (TfNSW)

The application was referred to TfNSW who advised the following:

*TfNSW understands that the development has been referred under the ESEPP to construct 2 new classrooms; make amendments to pedestrian entrances, and to upgrade the kiss and drop facility. **There is to be an increase in student & staff numbers (some 170 additional students and 7 additional staff) with this development proposal, and as such, the development is Traffic Generating Development under clause 57 of ESEPP.***

TfNSW also provided some comments to assist Council with its assessment, namely support and notations in relation to the proposed development. TfNSW

comments were considered by Council, namely the Traffic Engineering unit during their assessment of the application.

**Parking rates (Tweed DCP A2):**

The application proposed to amend the parking to limit it to staff only, subsequently increasing the number of available onsite parking spaces for staff. Previously this has not been restricted.

The application includes a total of 21 spaces onsite.

Tweed DCP Section A2 – Site Access and Parking Code requires 0.5 parking spaces /staff member.

The application results in a total of 36 teaching staff = 18 spaces required; and 21 parking spaces provided.

**3. LPG condition – a condition is cited at p.75, but I couldn't find it in the conditions list, unless it is deemed to be covered by c.95?**

**Response:**

Upon review the following is advised:

Delete reference to LPG tank:

LPG tank:

~~Correspondence from Donnelley Simpson Cleary Consulting Engineers Pty Ltd dated 13 August 2021 (Job No: 8147) confirms the design and location of the proposed LPG bulk storage tank is in accordance with AS1596, AS2419.1, AS3000, and NSW WorkCover Storage and Handling of Dangerous Goods Code of Practice 2005. The following condition has been recommended:~~

~~The Liquefied Petroleum Gas (LPG) bulk storage tanks shall be installed and managed in accordance with AS1596:2014 – The storage and handling of LP Gas and the requirements of SafeWork NSW.~~

This applies to DA21/0312. DA21/0312 has been conditioned accordingly.

**4. Flooding**

Although there is existing school infrastructure on the site, and the development provides an above PMF refuge (no policy basis for this is discussed in the report), there is a need to consider the vulnerable nature of the site population and the apparent speed of flood events cited in the recommendations (p.15) of the 2019 Meinhardt report – ie “Consequently, safe evacuation to these levels must be provided as there are often short warning periods when flood waters rise quickly. Most of the population in the subject site are students. It is therefore essential that they are aware of where the evacuation areas (designed at or above 3.1m AHD) are and informed on the safe evacuation means to these areas”.

On this basis it would be reassuring to see some requirement for flood warning response protocols for the School community in connection with this development.

Conversely, p. 21 of the assessment report states that “[the] applicant’s SEE confirms sufficient time for students and staff to evacuate the site in the event of a flood.” I can’t seem to find the source or justification for such a conclusion in the SEE, not again is there any condition I can see concerning how to respond to flood events.

**Response:**

Upon review the following is advised:

Probable Maximum Flood refuge is not required for a school, unless it has a residential component (the subject application does not).

A school is a non-habitable land use and one that is typically closed and vacated well in advance of the onset of any significant flooding. For this reason, Section A3 – Development of Flood Liable land of the Tweed DCP, does not include risk to life controls for schools and similar ‘educational establishment’ type land uses.

Council would not condition a requirement for a flood evacuation/action plan, in this context as it is not considered necessary (see above). Schools typically have their own operational plans and protocols that result in their closure well in advance of the onset of flooding.

Further to the above, Council do not rely upon flood action plans being used as conditions of consent to enable building on the floodplain. A flood action plan cannot satisfy the requirement for a permanent, failsafe, maintenance free measure to manage risk. This is a position shared by NSW State Emergency Service.

The development has already proposed floor levels for all new works to the minimum floor level for *habitable* development which is above the requirement for a development of this nature.

In summary:

*Council would expect the schools to be closed and vacated well in advance of the onset of any significant flooding. Therefore, Council is satisfied that the schools occupants would be safe in the event of extreme flood events exceeding the Designated Flood Event, up to PMF.*

- 5. Capital Investment Value/Land Use – the report quotes two quite different figures, namely \$6,472,610 excluding GST (pp.1, 5, 12); and \$11,376,993.00 (p.48).**

**Response:**

Upon review the following is advised:

*SEPP (State and Regional Development) 2011*

This SEPP was gazetted on 1 October 2011 and nominates a range of developments for which the Minister or the local Council is the consent authority and the circumstances where the Northern Regional Planning Panel may have the role of determining an application, depending on the class of development (type of use and value).

The estimated cost of the proposed development is \$6,472,610.00 which is above the \$5 million threshold for Crown development as specified by the *Environmental Planning & Assessment Act 1979*.

Therefore in this case Tweed Shire Council is the consent authority for this Development Application but the NRPP will have the determining powers of the Consent Authority and will be responsible for determining the application.

6. **Also at p.83 the report concludes “The subject site is zoned to provide a medium density residential use which is considered to be provided by this development”. Clearly these appear to be simple errors but they need to be corrected / explained.**

## Response:

Upon review the following is advised:

The proposed development is generally consistent with relevant environmental planning instruments and Council policy requirements. The proposal is considered suitable for the subject site, given its permissibility at this location. The subject site is zoned R2 Low Density Residential and the proposed additions and alterations to the existing Tweed Heads South Public School is considered to provide additional and upgraded facilities and services to meet the day to day needs of residents. As such the proposal is considered to be in the public interest.

## 7. Updated conditions:

| Condition | Submitted   | Amended   | New Condition |
|-----------|---|---|---------------|
| 5.        | <p>Sewer manholes are present on this site. Manholes are not to be covered with soil or other material.</p> <p>Should adjustments be required to the sewer manhole, then applications for these works must be submitted on Council's standard Section 68 Application form accompanied by the required attachments and the prescribed fee</p>  | <p>Consultation with Council shall be undertaken in relation to those matters typically covered through a section 68 process to ensure the relevant information is lodged, assessed and inspected by Council. The Assessment phase shall be undertaken within 40 business days of lodgement in accordance with the requirements of the Local Government Act 1993.</p>   | 5             |
| 16        | <p>The proposed sewer diversion works shall be generally designed and constructed in accordance with the MDA Consulting Engineers - Hydraulic Services Plan - Drawing MDA-HY-TRHS-0201-RevC . Detailed design information shall be provided to council for the assessment of these sewer diversion works. A Sewer Management Plan shall be submitted to support this application in demonstrating that the existing level of sewer service is maintained during construction. The application shall be submitted on Council's</p> | <p>The proposed sewer diversion works shall be generally designed and constructed in accordance with the MDA Consulting Engineers - Hydraulic Services Plan - Drawing MDA-HY-TRHS-0201-RevC . Detailed design information shall be provided to council for the assessment of these sewer diversion works. A Sewer Management Plan shall be submitted to support this application in demonstrating that the existing level of sewer service is maintained during construction.</p> | 16            |

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|----|---|---|----|
|    | standard Section 68 Application form accompanied by the required attachments and the prescribed fee. The sewer diversion works shall not commence until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.  |   |    |
| 33 | If the development is likely to disturb or impact upon water or sewer infrastructure (eg: extending, relocating or lowering of pipeline), written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to any works commencing. Applications for these works must be submitted on Council's standard Section 68 Application to Carry out Water Supply or Sewerage Work form accompanied by the required attachments and the prescribed fee. The arrangements and costs associated with any adjustment to water and wastewater infrastructure shall be borne in full by the applicant/developer. The Section 68 Application must be approved by Council prior to the commencement of works.  | If the development is likely to disturb or impact upon water or sewer infrastructure (eg: extending, relocating or lowering of pipeline), written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to any works commencing. | 33 |
| 38 | <p>Prior to the commencement of sewer infrastructure works the applicant shall obtain approval to install a private commercial sewage ejection pump station under Section 68 of the Local Government Act 1993. The application shall be submitted with a Sewer Management Plan that includes but is not limited to the following information;</p> <ul style="list-style-type: none"> <li>• System type and specifications including pump-well volume, pump specifications including pump curve information, and rising main size, length and location;</li> <li>• Details of operation and maintenance;</li> <li>• The sewer pump is to be constructed in a flood proof well with electrical equipment located above 1 in 100 ARI flood level; and</li> <li>• The pump shall have a maximum flow of 3.0 L/s (unless otherwise approved by Council's Water &amp; Wastewater Unit).</li> </ul> <p>The applicant shall note:</p> | DELETED   |    |



|    |   |   |    |
|----|---|---|----|
|    | <ul style="list-style-type: none"> <li>• The sewer pump unit and rising mains for the development will be owned, maintained and operated by the property owner;</li> <li>• The design of sewer pumping station shall comply with the Water Services Association (WSA) standards WSA02-2002-2.3 or WSA07-2007 for Pressure Sewerage;</li> <li>• The sewer pumping station is to be constructed in a flood proof well with electrical equipment located above 1 in 100 ARI. Pumps should be designed to pump a minimum of less than every 8 hours to reduce septicity in the pump well and rising mains or as approved by Council's Water Unit. Pump system shall be sized for industrial/ commercial and not domestic requirements;</li> <li>• At least 24 hours emergency storage capacity shall be provided within the sewer pump system, or hours of storage equivalent to the operating hours of the commercial property per day; and</li> <li>• The maximum flow rate discharge from the sewage pump station shall not exceed 3.0L/sec (unless otherwise approved by Council's Water &amp; Wastewater Unit).</li> </ul> |   |    |
| 78 | Prior to occupation of the final building the subject of this consent, the applicant shall obtain approval to operate the private commercial sewage ejection pump station under Section 68 of the <i>Local Government Act 1993</i> .  | Prior to occupation of the final building the subject of this consent, the applicant shall obtain Council approval to operate the private commercial sewage ejection pump station | 77 |

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