

## ORDER

### COURT DETAILS

Court	<b>LAND AND ENVIRONMENT COURT OF NEW SOUTH WALES</b>
Division	Class
Registry	Level 4, 225 Macquarie Street, Sydney
Case number	10357 of 2014

### TITLE OF PROCEEDINGS

Applicant	<b>Sladen, Janice</b>
Respondent	<b>Tweed Shire Council</b>

### DATE OF ORDER

Date made or given	29 August 2014
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Date entered

### TERMS OF ORDER

1. The appeal is upheld.
2. Development consent is granted to DA 13/0678 for the erection of an out building with shower and toilet at Lot 2 SP 38780 No 2/1 Beatrice Court, Pottsville subject to the conditions in Annexure 'A'.
3. The exhibits are to be returned except for 1, 2, A, B & C

### SEAL AND SIGNATURE

Court seal

Signature

Capacity

Date

### NOTICE

Subject to limited exceptions, no variation of a judgment or order can occur except on application made within 14 days after entry of the judgment or order.

**Annexure 'A'**  
**Conditions of Consent**

Sladen, Janice v Tweed Shire Council

DA13/0678 - Conditions

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos JP - 300 sheet 1-4 Revision C prepared by D-Zyn Drafting Services and dated March 2014, except where varied by the conditions of this consent and the following:
  - (a) The eave height of the proposed outbuilding is to be reduced by 450mm;
  - (b) The ridge height is to remain the same or lower;
  - (c) The door on the eastern elevation is to be reduced in height to 2100mm;
  - (d) The outbuilding is to be coloured in earthtones which match as far as possible the existing dwelling and all surfaces are to be non-reflective;
  - (e) The door on the western elevation is to be manually operated; and
  - (f) All gutters are to be fitted with gutter barriers to prevent leaf accumulation.
  - (g) The rear door to be reduced in width to a maximum width of 1.8 m and the door to be of a Manuel Panel Lift door specification
  
2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
  
3. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.

Should adjustments be required to the sewer manhole, then application shall be made to Council's Engineering Division for approval of such works.
  
4. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.

5. The construction of the outbuilding subject to this approval must at no time result in additional ponding occurring within neighbouring properties.

#### PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

6. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

#### PRIOR TO COMMENCEMENT OF WORK

7. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.
8. The erection of a building in accordance with a development consent must not be commenced until:
  - (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
  - (b) the person having the benefit of the development consent has:
    - (i) appointed a principal certifying authority for the building work, and
    - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

- (c) the principal certifying authority has, no later than 2 days before the building work commences:
    - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
    - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  
  - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
    - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
    - (ii) notified the principal certifying authority of any such appointment, and
    - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.
9. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.
10. Residential building work:
- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
    - (i) in the case of work for which a principal contractor is required to be appointed:

- \* in the name and licence number of the principal contractor, and
- \* the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

- \* the name of the owner-builder, and
- \* if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

(b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

11. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

12. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.
13. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.
14. DELETED.

#### DURING CONSTRUCTION

15. All proposed works are to be carried out in accordance with the conditions of development consent, approved management plans, approved construction certificate, drawings and specifications.
16. Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council:

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

17. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.
18. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).
19. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.
20. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.
21. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011.
22. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:
  - Noise, water or air pollution.
  - Dust during filling operations and also from construction vehicles.
  - Material removed from the site by wind.
23. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction



Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

24. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.
25. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blow from the site.
26. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
  - (a) internal drainage, prior to slab preparation;
  - (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
  - (c) external drainage prior to backfilling.
  - (d) completion of work and prior to occupation of the building.
27. Plumbing
  - (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
  - (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500.
28. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

29. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding 50°C.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

30. House drainage lines affected by the proposal are to be relocated to Council's satisfaction. Prior to the relocation of any plumbing and drainage lines, a plumbing permit and the relevant plumbing permit fee is to be submitted to Council. Inspection of drainage works prior to covering is required
31. The structure is to be sited at least one metre horizontally clear of sewer main on site. All footings and slabs within the area of influence of the sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not affect or be affected by the sewer main.

#### PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

32. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).
33. A final occupation certificate must be applied for and obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent must be satisfied at the time of issue of a final occupation certificate (unless otherwise specified herein).

34. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

#### USE

35. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.
36. The outbuilding subject to this approval is not to be used for any habitable, commercial or industrial purpose without prior approval of Council.
37. The outbuilding subject to this approval is not to be used or adapted for separate residential habitation or occupation.

**R Hussey**  
**Commissioner of the Court**