

1 May 2017

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Modification Assessments – Planning Services  
Department of Planning & Environment  
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**SYDNEY NSW 2001**

**Attention: Amy Robertson**

Dear Sir / Madam

**Proposed modification of the Cobaki Concept Approval  
(MP06\_0316 Mod 7) with regard to proposed amendments to the  
Cobaki Estate Development Code**

I refer to your email dated 23 March 2017 inviting Council to provide comment on the proposal and provide any recommended conditions. Upon review of the documentation associated with Mod 7, please find below Council's comments:

**1. General Formatting Changes**

No objections are raised with regard to the proposed general formatting changes.

**2. Update of Terminology and Use Definitions**

In general, there are no objections with the proposal to update the terminology and use definitions to match those of the standard instrument. However, there are numerous instances of the old terminology within the body of the amended Development Code. Some examples of this are noted in the following sections of the Code: 2.1.20(1); 2.2.1(aa); 2.2.1(ab); 2.2.4(5); 2.2.5(2) and (3); 2.2.6(1); 2.2.8(1); 2.2.12(1); 2.2.17(1); 2.2.21(1); 2.2.22(1); 3.3.2; and Appendix C.

It is considered that the entire document requires review in regards to updating the Code to ensure consistently, with regard to the use of correct terminology.

**3. Minor Amendments to the Exempt Development Provisions (Section 2.0)**

**a. Schedule 1 Subdivision 10 Gatehouse**

Subdivision 10 has been amended to reference *Gatehouses*. However, Section 2.1.19 still makes reference to *Business Identification Signs*. Section 2.1.20 also makes reference to *Business Identification Signs* and includes a reference to *SOHO dwellings*.

**b. Schedule 1 Subdivision 11 Business Identification Signs**

Section 2.1.21 incorrectly makes reference to *clothes hoists and clothes lines*.

**c. Schedule 1 Subdivision 14 Driveways**

It is considered appropriate to incorporate reference to Council's "*Driveway Access to Property - Design Specification*" (current version) within Section 2.1.28 Development Standards.

**d. Schedule 2 Subdivision 2 Building Heights and Setbacks**

- i. The subdivision application currently before Council (DA16/0056) incorporates a Plan of Development (POD) for the proposed new allotments within part Precinct 6 and part Precinct 7. The minimum road frontage setback requirements associated with the POD do not appear to be consistent with the proposed setback requirements noted in **Table 2.2.5.1**. The draft DA16/0056 POD setback requirements are noted below. The differences relate to the Primary Road Frontage Building Line for lots >10m -15m and the Garage Door Line for Zero Lot Dwellings.

SPECIFIC DEVELOPMENT CODE SETBACKS			
Applicable Specific Development Code	TD	PH	ZL
Dwelling Type	Traditional Detached Dwelling	Plex Housing	Zero Lots Dwelling
<b>Primary Road</b>			
Primary Road Frontage Articulation Zone	2.0	3.0	1.0
Primary Road Frontage Building Line	4.5	5.0	2.0
<b>Secondary Road</b>			
Secondary Road Frontage Articulation Zone	1.5	2.5	0.5
Secondary Road Frontage Building Line	2.5	4.5	1.5
<b>Primary &amp; Secondary Road Setbacks for Garages</b>			
Garage Door Line (Measured to Either Road Frontage)	4.5D/5.5S	6.0	4.5D/5.5S

- ii. Similar to the comments raised in Item 3(d)(i) above, the minimum side and rear setback requirements associated with the POD are not consistent with the proposed setback requirements noted in Tables 2.2.6.1 and Table 2.2.7.1. The draft DA16/0056 POD side and rear setback requirements are noted below.

<b>Rear Boundary</b>			
Rear Boundary Setback - Ground Floor & First Floors (Excluding rear lanes)	3.5	4.0	3.0
Rear Boundary Setback - Second Floors (Excluding rear lanes)	4.5	4.5	4.0
Rear Articulation Zone - Ground & First Floors (Excluding rear lanes)	3.0	3.0	2.0
Rear Articulation Zone - Second Floors (Excluding rear lanes)	4.0	4.0	3.0
<b>Side Boundary</b>			
Built-to-Boundary Wall Setback	0.025 to 0.25	0.025 to 0.25	0.025 to 0.25
Maximum Extent of Built-to-Boundary Wall (Up to 1 storey)(Lesser of the two)	<20 or 55%	<20 or 55%	<18 or 60%
Maximum Extent of Built-to-Boundary Walls (Up to 2 storeys)	N/A	N/A	<85%
Ground Floor Setback (To any shared boundary that is designated for built-to-boundary construction but excluding built-to-boundary walls)	1.5	N/A	1.2
Ground Floor Setback (To any shared boundary that is not designated for built to boundary construction)	1.2	1.5	1.2
First Floor Setback (To shared boundaries, excluding built-to-boundary walls but including parts over 4.5m high)	1.5	2.0	1.2
Second Floor Setback (To shared boundaries, if permitted, including all parts over 8.5m high)	2.0	2.5	2.0

**e. Schedule 2 Subdivision 6 Landscaped Area**

The minimum landscaped area nominated in Table 2.2.12.1 and the associated notations are not considered to be consistent with the Design Guidelines for the current subdivision application before Council (DA16/0056).

**f. Schedule 2 Subdivision 6 Ancillary Development**

- i. Table 2.2.24.1 *Fencing Controls* proposes to increase the allowable fill for solid fencing from 0.6m to 1.2m. Such an increase is not supported without further justification of such an increase. The Notes associated with the Table also makes reference to the approved acoustic report. It is noted that the acoustic report associated with DA16/0056 (current subdivision application for Part Precinct 6 and Part Precinct 7 being assessed by Council) recommends a 2.35m high acoustic barrier constructed “...above the adjacent building pad”. A 2.35m high solid barrier along the length of the Cobaki Parkway raises visual amenity concerns. The proposal to increase the allowable fill behind the fence to 1.2m could considerably increase the overall height of the acoustic barrier, further increasing the potential visual amenity concerns, particularly when considering the cumulative impact along the entire length of the Cobaki Parkway (where residential development occurs).
- ii. Table 2.2.24.1 Fencing Controls should make reference to Council’s required “sight triangles” for pedestrian safety, as per Council’s “Driveway Access to Property - Design Specification” (current version).
- iii. The subdivision application currently before Council (DA16/0056) incorporates a Plan of Development (POD) for the proposed new allotments within part Precinct 6 and part Precinct 7. The fencing requirements associated with the POD are not consistent with the proposed fencing requirements noted in Table 2.2.24.1. The draft DA16/0056 POD fencing requirements are noted below:

FENCING CONTROL	SETBACK FROM THE ROAD FRONTAGE BOUNDARY	MIN. AND MAX. HEIGHTS ABOVE GROUND LEVEL (EXISTING)*	TYPE/S OF FENCE PERMITTED	EXTENT PERMITTED TO FRONTAGE BOUNDARY	OTHER REQUIREMENTS OR NOTES
Fencing to a Primary Road frontage not providing privacy for a POS	A minimum of 0.5m	0.6m minimum and 0.9m maximum	Solid Masonry, or a combination of Solid Masonry and Transparent or Translucent	A maximum of 50% of the total length of the frontage boundary (including any gates)	Landscape planting is required between the frontage boundary and the fence
Fencing to a Primary or Secondary Road frontage providing privacy for a POS	A minimum of 0.5m	1.5m generally but up to 1.8m in limited portions to address topography considerations	A combination of 30% maximum solid masonry and Transparent, or Translucent	A maximum of 50% of the total length of the frontage boundary (including any gates)	Landscape planting is required between the frontage boundary and the fence
Fencing to a Secondary Road frontage of a corner lot not providing privacy for a POS	A minimum of 0.5m	1.5m generally but up to 1.8m in limited portions to address topography considerations	Solid Masonry, or a combination of 30% maximum Solid Masonry and Transparent, or Translucent	A maximum of 50% of the total length of the frontage boundary (including any gates)	Landscape planting is required between the frontage boundary and the fence

#### 4. **Update of Residential Controls (Section 3.0)**

##### a. **Section 3.1.6 Fencing**

- i. As per the fencing comments in Item 3(f) above, the proposed amendment to Table 3.1.6.1 *Fencing Forward of the Frontage Building Line* to increase the allowable level of fill (from 0.6m to 1.2m) is not supported.
- ii. Table 3.1.6.1 Fencing Forward of the Frontage Building Line should make reference to Council's required "sight triangles" for pedestrian safety, as per Council's "Driveway Access to Property - Design Specification" (current version).

##### b. **Section 3.2.1 Front Setbacks and Articulation Zones for Dwelling House, Semi-detached Dwelling and Attached Dwelling**

- i. Table 3.2.1.1 incorporates a second (incorrect) heading / notation referencing Table 2.2.5.1.
- ii. The note relating to Table 3.2.1.1 needs to clarify in what circumstances a 3m setback would be permitted (rather than the 4.5m as stated in the Table).
- iii. Similar to the comments in Item 3(d)(i) above, the setback for the Garage Door Line for lots 5m – 10m wide (0.6m behind the building line) differs from the setback required for same on the POD currently being assessed by Council (4.5m for a double or 5.5m for a single garage).

##### c. **Section 3.2.2 Side and Rear Setbacks for Dwelling House with an Effective Lot Width = and > 15m and certain Ancillary Development**

Similar to the comments raised in Item 3(d)(ii) above, the minimum side and rear setback requirements associated with the POD are not consistent with the proposed setback requirements noted in Table 3.2.2.1.

##### d. **Section 3.2.3 Side and Rear Setbacks for Dwelling House with an Effective Lot Width < 15m, Semi-detached Dwelling, Attached Dwelling and Dual Occupancy (attached), Outbuildings (detached) and certain Ancillary (attached ) Development**

This section is initially shown on Page 118 and then repeated on Page 125.

##### e. **Section 3.2.4 Private Open Space**

This section is initially shown on Page 121 and then repeated on Page 129.

##### f. **Section 3.2.5 Landscaped Area**

- i. This section is initially shown on Page 122 and then repeated on Page 130.
- ii. The minimum landscaped area nominated in Table 3.2.5.1 and the associated notations are not considered to be consistent with the

Design Guidelines for the current subdivision application before Council (DA16/0056).

**g. Section 3.3 Multi-Dwelling Housing, Secondary Dwelling and Dual Occupancy (detached) Controls**

- i. Control 4 of Section 3.3.1 *Multi Dwelling Housing* provides an opportunity (where justified) to vary specific controls for Multi Dwelling Housing. No objection is raised, with the exception of Building Height Controls.
- ii. Note 1 associated with the Controls for Section 3.3.1 *Multi Dwelling Housing* makes reference to the re-subdivision of each dwelling as either Torrens Title or Strata Title as being permitted. It is recommended that the Note be amended to state such re-subdivision as "*permitted with consent*".
- iii. The heading for Section 3.3.2 makes reference to Secondary Dwelling and Dual Occupancies "*Attached*", yet the body of the text references Dual Occupancies (*detached*).
- iv. Control 1 of Section 3.3.2 *Secondary Dwellings* makes reference to "...40% of the total floor area of the secondary dwelling and the principal dwelling". This control is inconsistent with the maximum floor area requirements for secondary dwellings identified in Section 2.2.2(aa) of the Code.
- v. It is also noted that the definition of a Secondary Dwelling in Appendix A makes reference to Clause 5.4 (of the Standard Instrument). Given the Controls proposed for Secondary Dwellings, it is considered appropriate to delete the reference to Clause 5.4.
- vi. Table 3.3.4.1 should be amended to delete the reference to Shop top housing.
- vii. Control 1 of Section 3.3.5 *Private Open Space* makes reference to Table 3.3.5, yet the Private Open Space Table is nominated as Table 3.3.5.1.
- viii. The landscaping notations associated with Section 3.3.6 *Landscaped Area* are not considered to be consistent with the Design Guidelines for the current subdivision application before Council (DA16/0056).

**h. Section 3.3.7 Residential Flat Building and Tourist and Visitor Accommodation**

- i. Control 5 of Section 3.3.7 provides an opportunity (where justified) to vary specific controls for apartments and tourist accommodation. No objection is raised, with the exception of Building Height Controls.
- ii. Note 2 associated with the Controls for Section 3.3.7 makes reference to the re-subdivision of each dwelling using Strata Title as being permitted. It is recommended that the Note be amended to state such re-subdivision as "*permitted with consent*".

**i. Section 3.3.8 Shop Top Dwellings**

- i. Control 2 of Section 3.3.8 provides an opportunity (where justified) to vary specific controls for Shop Top Dwellings. No objection is raised, with the exception of Building Height Controls.
- ii. Control 2 of Section 3.3.8 makes reference to Table 3.3.10.1, yet the actual Table is nominated as Table 3.3.8.1.
- iii. Note 1 associated with the Controls for Section 3.3.8 makes reference to the re-subdivision of each dwelling using Strata Title as being permitted. It is recommended that the Note be amended to state such re-subdivision as "*permitted with consent*".

**j. Section 3.3.9 Seniors Housing**

- i. Control 2 of Section 3.3.9 provides an opportunity (where justified) to vary specific controls for Seniors Housing. No objection is raised, with the exception of Building Height Controls.
- ii. Control 2 of Section 3.3.9 makes reference to Table 3.3.11.1, yet the actual Table is nominated as Table 3.3.9.1.
- iii. Note 1 associated with the Controls for Section 3.3.9 makes reference to the re-subdivision of each dwelling using Strata Title as being permitted. It is recommended that the Note be amended to state such re-subdivision as "*permitted with consent*".
- iv. The heading Table 3.3.9.1 makes reference to Retirement Communities. For consistency, the heading should reference "*Seniors Housing*".

**5. Update of Subdivision Development Controls (Section 5.0)**

**a. Section 5.2 Relationship to Tweed Shire Council Development Control Plan 2008 Section A5 – Subdivision Manual**

It is recommended that the following wording be added to the end of Objective (2) (additional wording shown in bold):

*(2) Where water and sewer provision is provided under a WIC Act License, that Authority is not bound by any council standard in relation to the provision, **except when connecting to public infrastructure.***

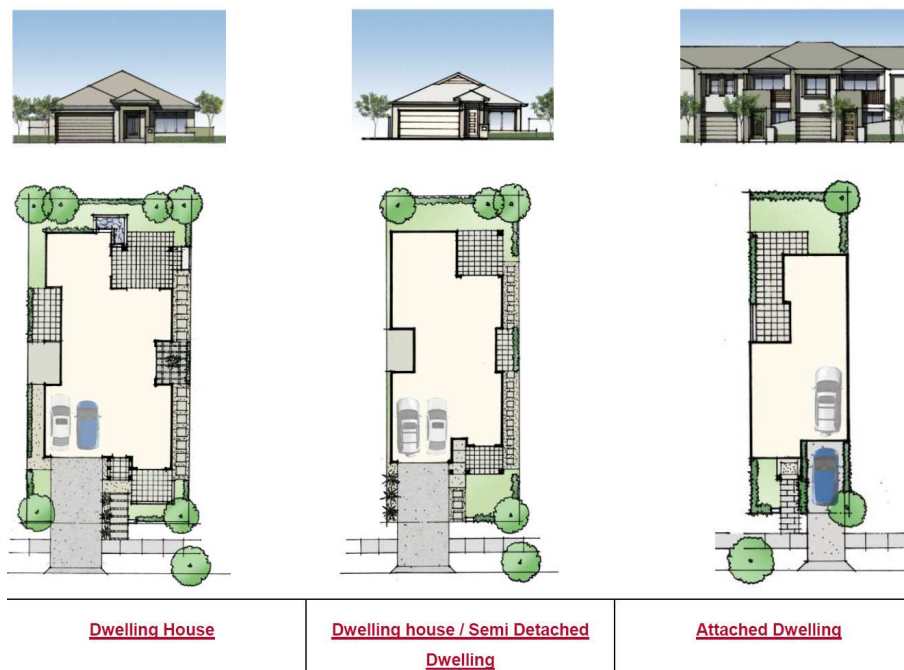
**b. Section 5.4 General Subdivision Controls**

- i. Control 6 makes reference to Figures 5.4.1 and 5.4.2 in terms of road hierarchy. The Code currently incorporates two copies of the Access Network Plan (Figure 5.4.1 *Road Hierarchy - Broader Area*), both of which are incorrect. Refer to comments in Items 6 and 7 below in relation to the correct version of Mod 4 plans that should be incorporated in the Code.
- ii. The new Figure 5.4.2 *Road Hierarchy - Broader Area* makes reference to the typical sections for the various road types. As advised previously (in relation to Mod 4), the "*Low Volume Neighbourhood Connector Road*" should be 18.5m, rather than the 19.0m shown. Figure 5.4.2 needs to be amended to be consistent with the plans being incorporated with the Development Code. Refer

to comments in Items 6 and 7 below in relation to the correct version of Mod 4 plans that should be incorporated in the Code.

**c. Table 5.4.1 – Minimum Area and Dimension Controls for New Lots**

- i. Table 5.4.1 *Minimum Area and Dimension Controls for New Lots* within Section 5.4 *General Subdivision Controls* makes reference to Semi-detached Dwellings being able to be re-subdivided (in accordance with Part 5.11). The re-subdivision of this type of housing is not supported and is considered inconsistent with Section 3.2 of the Code, whereby such housing type relates “...specifically to one dwelling on a single lot”, unless the allotment is large enough to accommodate the minimum lot size and dimensions for another housing product.
- ii. Table 5.4.1 nominates a minimum lot size for Attached Dwellings as 100m<sup>2</sup>. This is not supported given that the minimum effective lot width (5m) and the minimum lot depth (30m) results in a minimum lot area of 150m<sup>2</sup>. It is also noted that the Table requires a minimum 125m<sup>2</sup> building envelope.
- iii. The proposed 5m wide front access for Attached Dwellings is not supported, unless a rear lane access is provided. The proposed 5m lot width also results in a development not being able to achieve the on street parking requirements noted in Table 5.4.1. As shown in the image below (Page 113 of the Track Changes Code), a driveway at the front of the allotment would not provide sufficient on street parking if a 5m frontage is proposed for this type of development.



- iv. As noted in Appendix A, the definition for Attached Dwelling is:
  - a building containing 3 or more dwellings, where:
    - (a) each dwelling is attached to another dwelling by a common wall, and
    - (b) each of the dwellings is on its own lot of land, and

- (c) *none of the dwellings is located above any part of another dwelling.*

Any proposal for Attached Dwellings would then require a minimum of three on-street spaces. This is unachievable with such a small lot frontage, even with rear lane access.

- v. Table 5.4.1 allows for Dual Occupancies to be “...*re-subdivided in accordance with Part 5.10 or 5.11*”. Re-subdivision is only supported if the minimum lot size for each dwelling (i.e. 300m<sup>2</sup>) can be achieved, as well as all other minimum lot dimensions. Given that Part 5.10 relates to proposed *Private Water Infrastructure*, it is suggested that the reference to re-subdivision should be Part 5.11 *Torrens Title Subdivision* and 5.12 *Strata Subdivision*.
- vi. The proposed on-street parking requirements for Dual Occupancy as noted in Table 5.4.1 nominate only 0.25 spaces per dwelling. This is not supported, particularly given that dwelling houses, semi-detached dwellings and attached dwellings all require one space per dwelling.
- vii. Table 5.4.1 makes reference to Shop Top Dwellings twice, with different lot sizes and minimum lot depths in each.
- viii. Table 5.4.1 provides for Multi Dwelling Housing / Seniors development to be “...*re-subdivided in accordance with Part 5.10 or 5.11*”. Re-subdivision is only supported if the minimum lot size for each dwelling (i.e. 300m<sup>2</sup>) can be achieved, as well as all other minimum lot dimensions and infrastructure servicing can be achieved. Given that Part 5.10 relates to proposed *Private Water Infrastructure*, it is suggested that the reference to re-subdivision should be Part 5.11 *Torrens Title Subdivision* and 5.12 *Strata Subdivision*.
- ix. Neighbourhood Centre provisions within Table 5.4.1 makes reference to being re-subdivided in accordance with “...Part 5.10 or 5.11”. As noted above, subdivision requirements are within Section 5.11 and 5.12 of the Code.
- x. Similarly, Table 5.4.1 should be amended to reference Sections 5.11 in relation to the re-subdivision of Development Lots.

**d. Section 5.8 – Design Review Panel**

Control 2 *Membership* has been amended so as to reduce the number of members for the Design Review Panel and to amend the required occupation of the Chairperson (to now include Urban Designer / Town Planner) with no justification for such changes.

**e. Section 5.9 – Location and Easement for Services**

The controls proposed within Section 5.9 *Location and Easements for Services* are not the most current version of proposed controls. The proposed amendments to the Code are not consistent with those proposed under Mod 5, whereby Council has provided detailed comment. The most recent proposal under Mod 5 was the removal of Section 5.9, which would result in the development reverting back to the road / footpath allocation in Council’s Design Specifications. Refer to comments in Item 9(a) below.

**f. Section 5.10 – Private Services Infrastructure**

The controls proposed within Section 5.10 for *Private Water Infrastructure* are not the most current version of proposed controls. The proposed amendments to the Code are not consistent with those proposed under Mod 5, whereby Council has provided detailed comment. Refer to comments in Item 9(a) below.

**g. Section 5.11 – Torrens Title Subdivision**

- i. Section 1.5 of the Code sets out the structure of the Code, in that development covered by Part B of the document requires consent. As such, any proposal for subdivision triggers the need for development consent through Council. It is considered appropriate that Section 5.11 be amended to make this requirement clear.
- ii. Control 3 of Section 5.11 *Torrens Title Subdivision* proposes no minimum lot size for the re-subdivision of a multiple dwelling. This is not supported. The controls for Section 5.11 should make reference to the minimum area and dimension controls for the various housing types (Table 5.4.1).
- iii. Control 4 of Section 5.11 states that “...*Each lot is to provide frontage to a public road, which may necessitate multiple access handles with reciprocal rights of carriageway to be registered on title*”. This type of development would only be supported by Council if the created allotment also achieved minimum frontage to a public road for the type of dwelling proposed, albeit that frontage may not be utilised for the access.
- iv. The controls within Section 5.11 of the Code do not address individual servicing of re-subdivided allotments as required by Council (i.e. Multi Dwelling Housing is constructed with a bulk water meter), but if re-subdivided, these new allotments will be required to provide their own individual service, as per the provisions of DCP A5.
- v. Any development application to re-subdivide should incorporate a Plan of Development for the new development.

**h. Section 5.12 – Strata Subdivision**

- i. Control 1 of Section 5.12 *Strata Subdivision* makes reference to a “granny flat”.
- ii. As noted above, Section 1.5 of the Code sets out the structure of the Code in that Part B of the document requires consent. As such, any proposal for strata subdivision triggers the need for development consent through Council. It is considered appropriate that Section 5.12 be amended to make this requirement clear.

**6. Inclusion of Mod 4 Concept Plan and Development Matrix**

Sections 1.1, 4.1 and 6.0 of the S75W Report (Planit Consulting dated December 2016) make reference to the inclusion of the amended Concept Plan and Development Matrix associated with Mod 4.

Whilst Council has no objection to Mod 4 plans being utilised in Mod 7 to ensure that Mod 7 can proceed should there be any issues arise with the determination of Mod 4, the plans submitted with Mod 7 are no longer current.

It appears that Planit Consulting have incorporated plans associated with the original submission of Mod 4, rather than the more recent amended plans associated with Mod 4 (November 2016). The details of these are noted below in Item 7.

The Concept Plan (Figure 1.2.1) and Development Matrix (Figure 1.2.2) provided within Section 1.2 of the Code will need to be amended to reflect the correct version of the Concept Plan and Matrix.

## 7. **Condition A2 Project in Accordance with Plans**

As highlighted in Item 6 above, the incorrect versions of plans associated with Mod 4 have been incorporated with Mod 7. Accordingly, the proposed amendment to Condition A2 needs to reference the following updated plans:

LED006 / SK01.01	Rev YY	Concept Plan	18 Aug 2016
LED006 / SK01.02	Rev EE	Development Matrix	18 Aug 2016
LED006 / SK01.05	Rev GG	Access Network / Bus	18 Aug 2016
LED006 / SK01.09	Rev II	Precinct Location	18 Aug 2016

## 8. **Condition A3 Project in Accordance with Documents**

Subject to the comments noted within this submission being taken into consideration, no objections are raised to the amendment of Condition A3, in terms of referencing the updated / amended Cobaki Estate Development Code.

## 9. **Other Comments**

### a. **Alternative servicing through a WICA licence**

Section 1.2 of the Code incorporates additional wording with regard to *“this version of the Code”*.

Section 1.2 of the Code also makes initial reference to a proposal for alternate water / sewer servicing of the Cobaki development by way of a WICA licence through IPART.

Amendments to Section 5.9 and Section 5.10 are also noted in relation to controls for an alternate water / sewer provider.

#### Comment:

The additional wording proposed in Section 1.2 of the Code is not considered appropriate. Such wording is considered more applicable in the proponent's S75W Report to justify the proposed amendments to the Code.

Council opposes any changes to the Code in relation to water and sewer services by way of Mod 7. Council has undertaken detailed analysis of the proposed changes to the Code under Mod 5 (and Project Approval Mod 4) and has provided detailed comments to the Department in this regard. It is recommended that any changes to the Code with regard to

water and sewer servicing be removed from Mod 7 and remain with the assessment of Mod 5 of the Concept Plan.

**b. Mod 4 Amendments**

Page 9 of the S75W Report (Planit Consulting dated December 2016) makes reference to the new school site having an area of 3.26ha.

Table 1 shown on Page 10 of the S75W Report makes reference to the Community Facilities / Education / Utilities land having an area of 3.22ha.

Comment:

It appears that Planit Consulting has utilised information provided within the original Mod 4 application (May 2016), without taking into consideration the amended documentation associated with Mod 4 (November 2016 and March 2017).

The school site is 3.22ha and Table 1 should reference the Community Facilities / Education / Utilities land as having an area of 4.72ha.

Comments on Mod 4 plans are noted in Items 6 and 7 above.

It is also noted that Appendix B makes reference to “...*two schools over approximately 8.5 hectares of land*”.

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

Yours faithfully

**Lindsay McGavin**

Manager Development Assessment and Compliance