



AGENDA

ORDINARY COUNCIL MEETING Wednesday 14 December 2005

Chairman: Mr Garry Payne

**Administrators: Mr Garry Payne
Ms Lucy Turnbull
Mr Max Boyd**

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ITEMS FOR CONSIDERATION OF COUNCIL:

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**Associated Works at Lot 76 DP 755701, Lot 272 DP 755701, Lot 323
DP 755701, Lot 326 DP 755701, Duranbah Road, Kings Forest**

ABORIGINAL STATEMENT

Administrator Payne acknowledged the Bundjalung Aboriginal Nation with the following statement:

"We wish to recognise the generations of the local Aboriginal people of the Bundjalung Nation who have lived in and derived their physical and spiritual needs from the forests, rivers, lakes and streams of this beautiful valley over many thousands of years as the traditional owners of these lands."

CONFIRMATION OF MINUTES

Minutes of the Ordinary and Confidential Council Meetings held Wednesday 30 November 2005

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Minutes of the Ordinary Council Meeting held Wednesday 30 November 2005 (DW 1307205).
 2. Minutes of the Confidential Council Meeting held Wednesday 30 November 2005 (DW 1307238).
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SCHEDULE OF OUTSTANDING RESOLUTIONS

Schedule of Outstanding Resolutions

FOR COUNCILLOR'S INFORMATION:

1 JUNE 2005

REPORTS FROM THE DIRECTOR ENGINEERING & OPERATIONS

26 [EO] Letitia Road - Access to Tweed River Sand Bypass System

417 COUNCIL DECISION:

Administrator Boyd
Administrator Turnbull

That staff organises a round table discussion with interested parties to discuss the stabilisation trial of the unsealed pavement of Letitia Road.

Current Status: The Aboriginal Advisory Committee is facilitating a Summit Meeting.

3 AUGUST 2005

QUESTION TIME

[QT] Woodlands and Darlington Drives, Banora Point

Administrator Boyd

Asked :

1. Would Council staff please investigate and report on the traffic problems of long standing associated with the roundabout at the intersection of Woodlands Drive and Darlington Drive?

2. Could the report also include an estimate of cost and possible source of revenue?

The Director Engineering and Operations advised that a report on these matters will be prepared.

Current Status: A report has been prepared on this matter and will be considered by the Executive Management Team.

19 OCTOBER 2005

ADMINISTRATOR'S MINUTE

[AM] Kings Forest Draft Local Environmental Plan Amendment No 20

539 COUNCIL DECISION:

Administrator Turnbull
Administrator Boyd

RESOLVED that:-

1. Council notes that the development of a Local Environmental Plan for Kings Forest has been contentious and protracted.
2. Council notes that the project has been the subject of significant pressures from external agencies.
3. It is important the planning for Kings Forest proceed forthwith to ensure that orderly and responsible development of the area can proceed in a manner that is consistent with fulfilling the Tweed Shire Council's strategic objectives of developing a community that is environmentally, socially and economically sustainable.
4. The Kings Forest site is subject of much contention concerning ecological issues pertaining to the site. Council notes the Director Planning and Development has put in train a process by which to undertake an independent peer review of all ecological assessments of the Kings Forest site.
5. Council requests the Director Planning and Development to present a planning report on the Kings Forest Local Environmental Plan Amendment in February 2006 with recommendations as to the future zoning and management of the study area.

Current Status: Report to be prepared for February 2006.

ADMINISTRATOR'S MINUTE

[AM] Signing of Documents

Documents signed by Administrators

Administrator Boyd

- | | |
|------------------|--|
| 28 October 2005 | Chillingham and Tyalgum Community Pre-School - Deed of Agreement |
| 9 November 2005 | Acquisition of land for the purpose of relocation of sewer rising main at Goonal Place, Banora Point |
| 15 November 2005 | Certificate of Title request - Lease of Air Space - Condong Sugar Mill |
| 16 November 2005 | Release or Extinguishment of Restriction on the use of land DP 1030322 |

Administrator Payne

- | | |
|-----------------|--|
| 1 December 2005 | Licence Agreement over Crown Reserve 91717 for Agistment Purposes - Limpinwood |
|-----------------|--|

RECOMMENDATION:

That the information be received and noted.

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RECOMMENDATIONS OF THE OPERATIONS COMMITTEE

Recommendations of the Operations Committee Meeting held 14 December 2005 for Council Adoption

SUMMARY:

The recommendations from the Operations Committee Meeting held 14 December 2005 require formal adoption by Council.

RECOMMENDATION:

That Council adopts the recommendations of the Operations Committee Meeting held 14 December 2005. The items are summarised as follows:-

- 1 [GC] Tweed Community Kenya Mentoring Program - Stage 3
- 2 [GC] Draft Disposal of Assets and Lands Policy
- 3 [GC] Tweed Heads Southern Boat Harbour Slipway Refurbishment Project
- 4 [GC] Code of Meeting Practice
- 5 [GC] Code of Conduct Amendments
- 6 [GC] Monthly Investment Report for Period Ending 30 November 2005
- 7 [EO] Kallaroo Bund - Mooball / Crabbes Creek Drainage Union
- 8 [EO] Draft Generic Plan of Management - All Sporting Fields in Council's Ownership or Management
- 9 [EO] Casuarina Sportsfields
- 10 [EO] Park Naming 'Hec Beswick Park'
- 11 [EO] Car Parking - Piggabeen Sports Complex
- 12 [EO] Implementation of the Tweed Heads Masterplan - Jack Evans Boatharbour
- 13 [EO] Regional Sports and Recreation Facility Plan
- 14 [EO] Naming of Public Road, Hideaway Lane, Murwillumbah
- 15 [EO] Local Government Excellence in the Environment Awards
- 16 [EC] Request for "In Kind" Support/Waive Fee
- 17 [EC] Northern Rivers Catchment Management Authority: Coastal Floodplain and Acid Sulfate Soil Management Project (Part A – Tweed Floodplain)
- 18 [EC] Moving to the Tweed: Migration Heritage, People and Demographic Change, Stage 1
- 19 [EC] Tweed Surf Life Saving Strategy 2020
- 20 [EC] Kingscliff Amenities Hall Restoration
- 21 [SUB-PTW] Minutes of the Public Transport Working Group Committee Meeting held 26 October 2005
- 22 [SUB-TRC] Minutes of the Tweed River Committee Meeting held 30 November 2005

REPORT:

As per summary.

RECOMMENDATIONS OF THE PLANNING COMMITTEE

Recommendations of the Planning Committee Meeting held on 30 November 2005 for Council Adoption

SUMMARY:

The recommendations from the Planning Committee Meeting held 30 November 2005 are reproduced in the body of this report for formal adoption by Council.

RECOMMENDATION:

That Council adopts the recommendations of the Planning Committee Meeting held on 30 November 2005 as reproduced in the body of this report.

REPORT:

- 1 [PD] Development Application DA05/0924 - Use of Existing Premises as a Bulk Store at Lot 21 Sec 4 DP2379, No. 56 Recreation Street, Tweed Heads**

P 1 COMMITTEE DECISION:

**Administrator Turnbull
Administrator Boyd**

RECOMMENDED that this item be deferred pending the provision of appropriate legal advice in relation to the zoning for this application.

FOR VOTE - Unanimous

- 2 [PD] Development Application D95/0148.01 for an Amendment to Development Consent D95/0148 for Continuation and Expansion of Existing Quarry (Quirk's) at Lot 12 DP 601427, Lot 1 DP 34555, Lot 26 DP 615931, Eviron Road, Eviron**

P 2 COMMITTEE DECISION:

**Administrator Turnbull
Administrator Boyd**

RECOMMENDED that this report be referred to the next meeting of Council's Local Traffic Committee to assess the speed limits posted in this locality in relation to this Section 96 Application D95/0148.01 and that Ms Sandy Ellis (Principal Duranbah Public School) be invited to attend the meeting to discuss this matter.

FOR VOTE - Unanimous

3 [PD] S82A Review of Determination - DA05/0701 for Greyhound Kennels and Colorbond Fence at Lot 3 DP 701833, No.3808 Kyogle Road, Mount Burrell

P 3 COMMITTEE DECISION:

**Administrator Turnbull
Administrator Boyd**

RECOMMENDED that: -

1. The S82A Review of Determination for Development Application DA05/0701 for greyhound kennels and colorbond fence at Lot 3 DP 701833, No.3808 Kyogle Road, Mount Burrell be refused and the following reasons for refusal be confirmed:
 1. The proposed development fails to satisfy the primary objective for the 1(a) Rural zone under the Tweed Local Environmental Plan 2000 in that it would not protect the rural character and amenity.
 2. The proposed development fails to satisfy Clause 17 of the Tweed Local Environmental Plan 2000 in that it would have a significant social impact upon the local community.
 3. The proposed development fails to satisfy Clause 15 of the Tweed Local Environmental Plan 2000 in that it cannot ensure there will be adequate measures to protect the environment and the community's health.
 4. The proposed development fails to satisfy Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979 in that it is not supported by adequate information to allow a proper assessment in relation to impact upon the rural and natural environment.
 5. The proposed development fails to satisfy Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979 in that it would have an unreasonable and adverse impact upon the rural environment and neighbouring properties in terms of noise emissions.
 6. The proposed development fails to satisfy Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979 in that the suitability of the site has not been adequately demonstrated.
 7. The proposed development fails to satisfy Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 in that because the adverse impacts cannot be properly assessed, it is not in the public interest.

8. The proposed development fails to satisfy Section 79C(1)(d) of the Environmental Planning and Assessment Act 1979 in that the application has attracted a number of public submissions in the negative which have raised matters which are considered to have merit.
2. Council's Solicitors be instructed to defend the Appeal currently before the Land & Environment Court.

FOR VOTE - Unanimous

4 [PD] Tweed Heads Master Plan - Section 94

P 4 COMMITTEE DECISION:

**Administrator Turnbull
Administrator Boyd**

RECOMMENDED that Council:

1. Adopts the exhibited amended Section 94 Contribution Plan No 26 – Shire Wide/Regional Open Space.
2. Adopts the exhibited Section 94 Contribution Plan No 27 – Tweed Heads Master Plan – Streetscaping and Local Open Space.
3. Gives public notice in the Tweed Link of its decision in accordance with the Environmental Planning and Assessment Regulations 2000, specifying that the Section 94 Contribution Plans come into effect on the date of the notice.

FOR VOTE - Unanimous

5 [PD] New Arrangements for Development Control Plans

P 5 COMMITTEE DECISION:

Administrator Payne

Administrator Boyd

RECOMMENDED that Council: -

1. Endorses the exhibition of draft Tweed Shire Development Control Plan comprising a compendium of all current Development Control Plans for 28 days in accordance with Clause 18 of the Environmental Planning and Assessment Regulation 2000.
2. Delegates to the Manager of Strategic Planning to prepare the details of this amalgamated Development Control Plan.
3. Incorporates into the single Development Control Plan any amendments to source Development Control Plans that have been approved by Council.

FOR VOTE - Unanimous

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Recommendations of the Planning Committee Meeting held on 14 December 2005 for Council Adoption

SUMMARY:

The recommendations from the Planning Committee Meeting held 14 December 2005 require formal adoption by Council.

RECOMMENDATION:

That Council adopts the recommendations of the Planning Committee Meeting held 14 December 2005. The items are summarised as follows:-

- 1 [PD] Section 96 Applications D88/0057.02, D87/0618.01 & 1615.01 for Amendments to Development Consents D88/0057, D87/0618 & 1615 which all Granted Approval for Part of the Cabarita Gardens Lakes Resort Motel at Lot 9 DP 238880, Tamarind Avenue, Bogangar**
- 2 [PD] S96 Application D87/0874.03 for Amendment to Development Consent D87/0874 for Erection of 6x3 Storey Holiday Resort Buildings Comprising 60x2 Bedroom Units, Sports Complex & Additional 72 Car Parking Spaces - Lot 9 DP238880 Tamarind Avenue, Bogangar**
- 3 [PD] Section 96 Application DA03/1855.08 for an Amendment to Development Consent DA03/1855 for Twenty-Three (23) Factory/Industrial Units at Lot 130 DP 817783, Traders Way, Tweed Heads South**
- 4 [PD] Section 96 Application DA02/1983.07 for an Amendment to Development Consent DA02/1983 for the Use of Property for Filming and Producing a Television Program at Part Lot 74 DP755715, Lot 77 DP755715, Lot 93 DP755715, No. 366 Dungay Creek Road, Dungay**
- 5 [PD] Development Application DA04/1024 for Multi Dwelling Housing Comprising of Six Dwellings at Lot 1 DP 1058988, No. 70 Adelaide Street, Tweed Heads**
- 6 [PD] Review of Tweed Local Environmental Plan 2000**
- 7 [PD] Tweed Local Environmental Plan 2000, Amendment No 70 (Exempt and Complying Development) and Accompanying Amendment No 4 to Development Control Plan No 40**
- 8 [PD] Kingscliff Locality Plan - Community Values**

REPORT:

As per Summary.

REPORTS THROUGH THE ACTING GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING & DEVELOPMENT

MATTERS FOR CONSIDERATION UNDER SECTION 79(C)(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The following are the matters Council is required to take into consideration under Section 79(C)(1) of the Environmental Planning and Assessment Act 1979 in assessing a development application.

MATTERS FOR CONSIDERATION

1. In determining a development application, a consent authority shall take into consideration such of the following matters as are of relevance to the development the subject of that development application:
 - (a) the provisions of
 - (i) any environmental planning instrument; and
 - (ii) any draft environmental planning instrument that is or has been placed on exhibition and details of which have been notified to the consent authority, and
 - (iii) any development control plan, and
 - (iv) any matters prescribed by the regulations,that apply to the land to which the development application relates,
 - (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts of the locality,
 - (c) the suitability of the site for the development,
 - (d) any submissions made in accordance with this Act or the regulations,
 - (e) the public interest.

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- 1 [PD] DA05/0308 for a Staged Residential Subdivision (3 Stages) Comprising 86 Single Dwelling Lots, 12 Duplex Blocks, 1 Drainage Reserve, 1 Residue Lot & 2 Public Reserves at Lot 1 DP392245, Lot B DP368706, Lot 13 DP793985, Barnby Street, Murwillumbah**

ORIGIN:

Development Assessment

FILE NO: DA05/0308 Pt1

SUMMARY OF REPORT:

Council has been served with a Class 1 Appeal (deemed refusal) for DA05/0308, that seeks consent for a staged residential subdivision (3 stages) comprising 86 single dwelling lots, 12 duplex blocks, 1 drainage reserve, 1 residue lot & 2 public reserves at Lot 1 DP 392245, Lot B DP 368706, Lot 13 DP 793985, Barnby Street, Murwillumbah.

RECOMMENDATION:

That Council's Solicitors be instructed to take action to defend Appeal Number 11048 of 2005 in the Land Environment Court (DA05/0308 for a staged residential subdivision).

REPORT:

Applicant: Metricon Qld Pty Ltd
Owner: Barnby Developments Pty Ltd
Location: Lot 1 DP 392245, Lot B DP 368706 & Lot 13 DP 793985, Barnby Street, Murwillumbah
Zoning: Part 1(b2) Agricultural Protection, Part 2(a) Low Density Residential & Part 2(c) Urban Expansion
Cost: \$6,000,000

BACKGROUND:

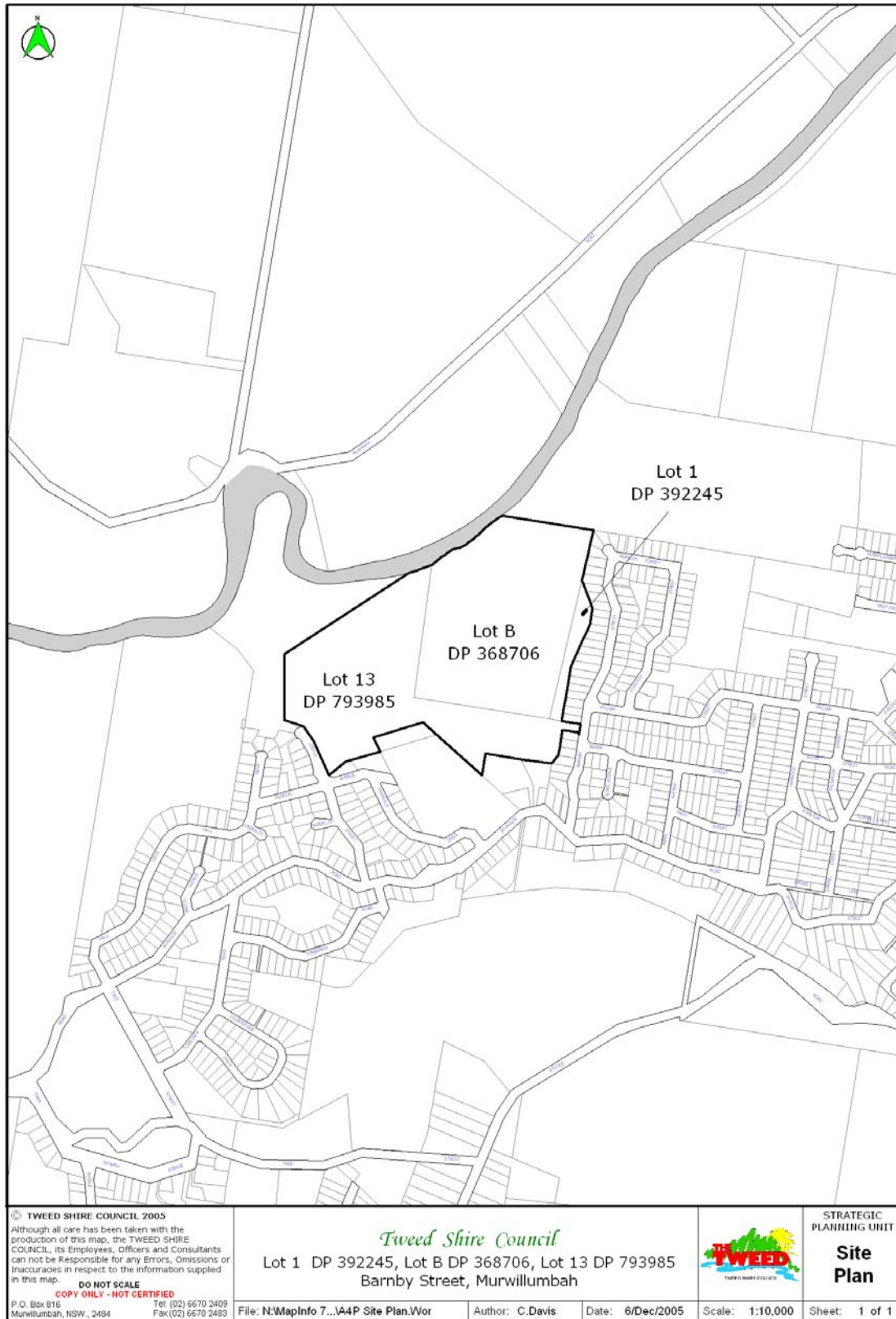
Council has been served with a Class 1 Appeal (deemed refusal) for DA05/0308, that seeks consent for a staged residential subdivision (3 stages) comprising 86 single dwelling lots, 12 duplex blocks, 1 drainage reserve, 1 residue lot & 2 public reserves at Lot 1 DP 392245, Lot B DP 368706, Lot 13 DP 793985, Barnby Street Murwillumbah.

The application is still being assessed specifically having regard to (but not limited to) the extent of landforming, the geotechnical stability of the land, the traffic implications, the permissibility of ancillary structures on the adjoining agricultural land, and the potential loss of amenity for adjoining residences as a result of the development.

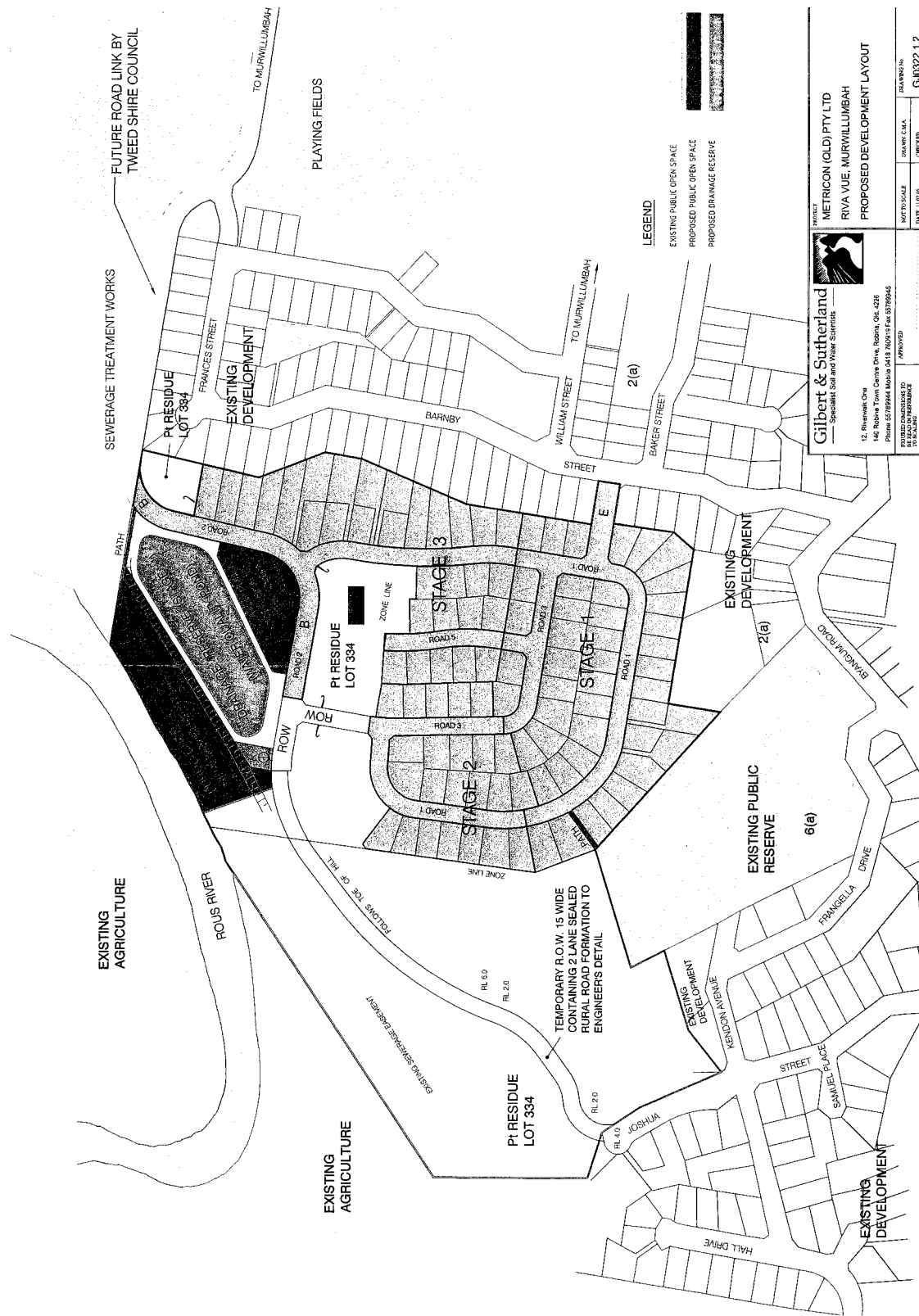
Before this DA is formally reported back to the Committee the outcome of the Murwillumbah Traffic Study needs to be determined by The Planning Committee. This is necessary as the outcome of the Murwillumbah Traffic Study may impact on this application. It is anticipated that the Murwillumbah Traffic Study results will be reported to the Committee in early 2006.

However, in the interim Council must pursue the application in the Land & Environment Court and therefore this report seeks a resolution for Council's solicitors to defend the Appeal.

SITE DIAGRAM:



Proposed Subdivision Layout



Gilbert & Sutherland
Specialist Soil and Water Scientists

PROJECT: METRICON (OLD) PTY LTD
RVA YUE, MURWILLUMBAH
PROPOSED DEVELOPMENT LAYOUT

12 Riverside One
140 Robson Town Centre Drive, Robson, Qld 4226
Phone: 55769844 Mobile: 0413 769515 Fax: 55769845

APPROVED	DATE ISSUED	DRAWN BY	SCALE

DATE: 12/12/05

Any submissions made in accordance with the Act or Regulations

The Development Application was advertised for a period of 14 days from 13 April 2005 to 27 April 2005. During this period Council received a total of 20 individual objections and a further petition with 25 signatures opposing the development. The grounds for objection focussed on the extent of earthworks, traffic concerns, loss in amenity and the loss in the value of adjoining properties. These submissions will be considered in detail in the final Council Report when the assessment of the application is complete.

OPTIONS:

1. Instruct Council's Solicitors to take action to defend Appeal Number 11048 of 2005 in the Land Environment Court.
2. Request the DA be reported to Council for determination.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council will incur its own legal costs in relation to the subject Appeal.

POLICY IMPLICATIONS:

Any policy implications will be reported in the final Council Report that details the complete assessment of the development application.

CONCLUSION:

The proposed development has issues that need resolution prior to any determination. These issues will continue to be pursued in the hope of achieving some resolution, however, in the interim Council must defend the application in the Land & Environment Court.

Therefore this report seeks a resolution for Council's solicitors to defend the Appeal.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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REPORTS FROM THE ACTING DIRECTOR ENGINEERING AND OPERATIONS

2 [EO] EC2005-188 East Murwillumbah and Dorothy Street Flood Levees Upgrade

ORIGIN:

Design

FILE NO: EC2005-188

SUMMARY OF REPORT:

Tenders for the East Murwillumbah and Dorothy Street Flood Levees upgrade have closed.

Funding to the value of \$340,000 has become available through the New South Wales Flood Plain Management Program. Under the Program arrangements Council has to provide funding on a \$2 (Grant) : \$1 (Council) ratio. Advice has been received that more funds will be available later in the 2005/2006 financial year.

RECOMMENDATION:

That:-

- 1. M J & S L Seery Excavations Pty Ltd be awarded the contract for the East Murwillumbah and Dorothy Street Flood Levees upgrade with a total price of \$963,155 (GST exclusive) plus variations of up to a total of \$144,473.25 (15%) that have been appropriately authorised by the Director Engineering & Operations.**
- 2. All documentation be executed under the Common Seal of Council.**

REPORT:

Tenders for the East Murwillumbah and Dorothy Street Flood Levees upgrade, closed on the 23 November 2005.

At the close of tenders, submissions had been received from two (2) Contractors:-

- M J & S L Seery Excavations Pty Ltd
- Bauer Civil Products Pty Ltd

Bauer Civil's submission only contained details of an alternative removable levee detail and so was deemed non conforming.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Funding to the value of \$340,000 has become available through the New South Wales Flood Plain Management Program. Under the program Council must contribute \$1 for every \$2 dollars of Program Allocation. Funds are available (up to \$1,350,000) in the 2005/2006 budget under Flood Mitigation Projects, to match the grant allocation.

Advice received from the Department of Natural Resources by email is that additional grant assistance to cover the full construction cost will be available later in 2005/2006 (due to under expenditure elsewhere).

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. **Confidential Attachment** – Supplementary Confidential information to Agenda Item - East Murwillumbah and Dorothy Street Flood Levees upgrade (DW 1310206).
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3 [EO] EC2005-033 Award of Contract

ORIGIN:

Contracts

FILE NO: GC12/3-200533 Pt1

SUMMARY OF REPORT:

On 30 November 2005 under Council Minute No. C145 Council resolved to accept the tender of Belmadar Constructions Pty Ltd for Contract EC2005-033, Construction of the Kingscliff Sewage Treatment Plant. Council has been advised that Belmadar Constructions Pty Ltd is being sold to the Victorian based organisation FRH Group Pty Ltd, which will operate the business whilst retaining the staff and other resources of Belmadar Constructions Pty Ltd.

FRH Group Pty Ltd has advised Council that it will retain the essential components of Belmadar Constructions Pty Ltd and that the agreed price, project structure, personnel and management systems will remain as in the tender proposal reported to Council on 30 November 2005. Council's solicitors have advised that Council should complete the tender with FRH Group Pty Ltd. Council's solicitors have advised that under the circumstances a change of name such that the contract will be entered into with FRH Group Pty Ltd is acceptable.

RECOMMENDATION:

That Council completes the tender acceptance with FRH Group Pty Ltd.

REPORT:

As per Summary of Report.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Legal requirements for tendering an assignment of contract obligations.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Supplementary Confidential Attachment (DW No. 1311302).
-

CONFIDENTIAL MATTERS

REPORTS THROUGH ACTING GENERAL MANAGER IN COMMITTEE

REPORTS FROM THE DIRECTOR PLANNING & DEVELOPMENT IN COMMITTEE

- 1 [PD] Development Application DA05/0840 for Grazing of Cattle and Associated Works at Lot 76 DP 755701, Lot 272 DP 755701, Lot 323 DP 755701, Lot 326 DP 755701, Durambah Road, Kings Forest

REASON FOR CONFIDENTIALITY:

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(g) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

