



# **AGENDA**

## **PLANNING COMMITTEE MEETING Wednesday 2 November 2005**

**Chairman: Ms Lucy Turnbull**

**Administrators: Mr Ross Woodward  
Ms Lucy Turnbull  
Mr Max Boyd**

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## ITEMS FOR CONSIDERATION OF THE COMMITTEE:

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**CONFIRMATION OF MINUTES**

**Minutes of the Planning Committee Meeting held Wednesday 19 October 2005**

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

1. Minutes of the Planning Committee Meeting held Wednesday 19 October 2005 (DW 1283965)
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## REPORTS THROUGH GENERAL MANAGER

### 1 [GM] Report on Tweed Shire Council Public Inquiry Recommendations

#### ORIGIN:

General Manager

#### SUMMARY OF REPORT:

Council at its meeting of 19 October 2005 resolved as follows: -

*"that this item be deferred to the next Planning Committee Meeting to be held Wednesday 2 November 2005 to enable further consideration of submissions, further detailing required of matters such as biodiversity, the need to ascertain actioning relating to recommendation 23, Page 980 of Professor Daly's report and the need to obtain independent legal advice should this action not be proceeding expeditiously."*

The report is now reproduced below for Council's determination.

#### RECOMMENDATION:

That: -

1. Council notes the State Planning reform legislation which has recently been released with provisions for a standard Local Environmental Plan and consolidation of the Development Control Plans into one document. Tweed Shire Council will be required to prepare and adopt a new Local Environmental Plan within 3 years under State Government legislation and Council will include the Tweed Futures Strategy, the Far North Coast Strategy and any other changes which are needed in a new Local Environmental Plan for the Tweed.
2. Council considers there is no need at this stage of the development to prepare a new Master Plan/Development Control Plan for the SALT development area because there is an existing master concept plan in the current development approval. The SALT subdivision component is 70% complete and both major resorts are either complete or nearing completion. Any future development applications for housing, medium density development or tourist resorts on the remaining parcels of land will need to comply with the existing comprehensive statutory planning controls for these proposals. These applications will require public advertising and assessment on merit with consideration of all submissions.

3. Council continues to obtain legal services from Stacks the Law Firm until the end of the current contract, ie. 6 September 2006.
4. That the Administrators meet with Stacks Northern Rivers, and the General Manager, to discuss whether Stacks Northern Rivers has breached its retainer to represent Council's interest at the Public Inquiry.



**REPORT:**

Council at its meeting of 17 August 2003 resolved that:

*"The General Manager be requested to bring forward a report to Council on the Tweed Shire Council Public Inquiry Second Report prepared by Emeritus Professor Maurice Daly regarding the recommendations affecting Council."*

The General Manager has reviewed recommendations, 14,17 and 21, which have been identified as affecting Council. The outcome of the review is the submission of three recommendations to Council.

**Recommendation 14 – page 969**

**That an urgent and widespread review be made of the council's planning regime including its strategic planning, the Local Environment Plan and the various Development Control Plans to ensure:**

- **that future development occurs in areas that are appropriate to the nature of that development**
- **that council's planning regime presents a clear and understandable picture of council's vision for the future development of the area**
- **that council's planning regime is both coherent, equitable and resilient**
- **that conditions of consent are able to give effect to council's intentions and are enforceable**

The future planning and vision for the Tweed is contained in the document Tweed Futures. This strategic document was prepared following extensive public consultation including the assistance of a Steering Committee made up of a representative cross section of the Tweed community. An independent facilitator was engaged to help prepare this strategy. The strategy was approved in September 2004. A copy of this strategy was forwarded to the Commissioner in the Council's initial submission to the Inquiry. The recommendation above does not appear to acknowledge or understand this planning strategy for the Tweed.

Developing Council's planning regime into a coherent, equitable and resilient system has always been this Council's objective. It must be acknowledged however that the planning system has to comply with the State Planning legislation. It is readily acknowledged that the State Planning legislation is in need of reform and several reforms have been introduced since the final report on the Tweed Inquiry was released in August 2005. These reforms have been contemplated over a number of years and are now being implemented. A draft standard template for LEP's has been recently introduced and there is also a requirement to condense all of the relevant DCP's for areas into one document to help simplify the process and public understanding for future development applications. The Tweed Shire Council is part of the Far North Coast Strategy area and a new LEP will be required to incorporate the regional strategies being developed by DIPNR (now Department of Planning). It will be an opportunity to incorporate Tweed Futures, the standard LEP template provisions, the Far North Coast

Strategy and the consolidation of Council's DCP's over the next 12-18 months. In many ways, events and changes in planning legislation, have overtaken this recommendation.

This recommendation has been expanded with a number of explanatory points. These explanatory points are generally unsubstantiated and need to be addressed.

- \* ***There are serious concerns that the council has set aside areas for large residential and other developments based either on historic assessments or inadequate review.***

The Tweed Shire Council has urban release areas sufficient for the predicted population growth in the Tweed for the next 30 years. These areas were reviewed, reassessed and reiterated in the Tweed Local Environmental Plan 2000. The conflict between zones for urban expansion and environmental conservation is acknowledged. The Tweed Shire Council has required extensive and comprehensive environmental studies of all these urban release areas as part of the development approval process. These environmental reports are independently reviewed and any changes needed to the areas zoned for urban expansion to provide for environmental protection are carried out. There have been significant areas of land set aside for environmental protection in this process, eg. Black Rocks, Koala Beach, SALT, Casuarina Beach etc. There is nothing untoward in this process and indeed the planning for future population growth and the infrastructure to service that growth in the Tweed is exemplary and can be attributed to the urban release areas which have been designated for urban expansion.

- \* ***There are other serious concerns that there has been ad hoc development within the Tweed particularly in rural, low lying or other areas that have not been suited to these developments.***

This comment is not substantiated in any way. The problems of development in the floodplain are acknowledged and Council is addressing these issues through floodplain modelling and a development control plan based on the NSW guidelines for development in flood prone areas. The urban development of rural areas is prohibited by State legislation and this is reinforced in the Tweed LEP. Some tourist orientated development has been approved in the Tweed but there has not been an ad hoc approach to this. Development Applications are submitted at various times by private individuals in different locations and these have to be considered on merit. This process is the same for all development proposals throughout Australia.

- \* ***The Tweed is an area of high biodiversity, exceeding Kakadu and approaching the Daintree area. It is the home to a number of rare and endangered species. The DEC has raised serious concerns that the council has not given adequate consideration to:***

- ***the natural and cultural values of land when determining developments***
- ***the cumulative effects of development***
- ***has not enshrined suitable conditions in its consents***

***These views have been echoed by a number of local residents***

The statement about the Tweed being an area of high biodiversity in fauna and flora including rare and endangered species is fully concurred with. In relation to DEC concerns it is unfortunate that Professor Daly has accepted the advices and statements from the DEC without any critical analysis of different viewpoints. Council has received comprehensive evidence refuting the validity of the DEC submissions. There is also comprehensive evidence on Council's files which is completely contrary to the claims made by DEC. This information wasn't sought or obtained by Professor Daly from Council staff. The claims by DEC that Council has not given adequate consideration to: -

- the natural and cultural values of land when determining developments
- the cumulative effects of development
- has not enshrined suitable conditions in its consents

is difficult to accept given that the DEC has been fully consulted on all of the environmental issues for development in the Tweed and all of the DEC recommendations have been incorporated into the relevant development approval conditions and further the DEC has formally advised that the DEC recommendations have been complied with.

- \* ***The area is facing considerable pressure from developers who wish to carry out developments both in coastal and in rural areas. This pressure is emanating from outside the area and within the Tweed. So far as it concerns local developers, many of these were associated with the Tweed Directions campaign and the Tweed Directions councillors.***

The pressure from developers who wish to carry out developments in the Tweed is due to the expansion of the Brisbane Gold Coast conurbation. The Tweed Shire Council has a responsibility to accommodate and manage this population growth. There is nothing untoward in experiencing this pressure. The election issues associated with the Tweed Directions campaign have been previously dealt with.

- \* ***The current planning regime does not currently have sufficient resilience to meet these pressures.***

This comment is difficult to accept. There is no evidence presented that supports the statement. All development applications are considered on merit and independently assessed by Council's town planners. The only development applications which are referred to Council are those which are controversial or require a decision in relation to existing policies. The amount of development in the Tweed is significant however the processing times, amount of planning assessment and the degree of litigation are better than most other local governments throughout NSW based on the State Governments planning and development statistics.

Approximately 95% of all development is approved by Council staff under delegation. There has not been any evidence, nor has it occurred, where planning staff have capitulated to developer pressures. This allegation is unfounded and has not been substantiated in any way.

- \* ***The council has ignored concerns that have been raised by staff and by DIPNR over the clarify of wording of the Local Environmental Plan.***

There have been numerous amendments to the Tweed LEP. These amendments are carried out whenever an issue arises where there is merit in clarifying the wording and intent of the LEP provisions. There have not been any concerns raised by staff and by DIPNR which have not been addressed with an appropriate amendment to the Tweed LEP.

- \* ***The majority of councillors have used their voting power to stand in the way of proper planning in the Tweed in order to provide preference to and to grant concessions to developers.***

The way in which individual Councillors vote on issues is or should be a reflection of their commitments made to the residents who voted for them.

- \* ***The councillors have failed to reflect and to impose as conditions of consent various provisions contained in council's Development Control Plans and Section 94 Contributions Plans.***

The Tweed's planning reports are prepared on a fully independent basis for Council's consideration. Submissions are made to Councillors on development issues by both developers and residents. It is part of the normal democratic process for Councillors to accept or reject planning advices or seek to introduce new planning policies to reflect changing residents concerns or priorities. This statement is not substantiated with an example however there would be many instances in all local government Councils where planning conditions are amended to a higher or lower standard depending on the representations made in relation to them. The recommendation in the Daly report that the Council should give reasons for any changes to recommendations and conditions is concurred with.

### **Recommendation 17 – page 973**

**The Council must urgently undergo a process of implementing identified and enforceable controls on the SALT development, probably through the adoption of a master plan supported by a DCP.**

The following table summarises the major Development Consents issued for SALT and their current status: -

DA02/1422 (24/03/03)	473 Lot Subdivision in 18 Stages	Stages 1-7 have been completed and the subdivision plan has been registered. A number of dwellings have been erected	This consent has been modified on a number of occasions
DA02/1423 (24/04/03)	Outrigger Resort 318 rooms	Completed December 2004 and operational	
DA 477-11-2003 (03/05/04)	Peppers Resort 346 rooms	Completion planned for December 2005	This consent was issued by the Minister for Infrastructure, Planning and Natural Resources

The following list details the comprehensive planning controls which apply to the SALT site and to the remaining developable areas of land.

## 5.1 Environmental Planning Instruments

### 5.1.1 Tweed Local Environmental Plan 2000

This plan is the principal planning instrument controlling development of the land pursuant to which it is primarily zoned 2(f) Tourism. The plan contains a unique provision applicable to the Salt site only at Clause 53 and Schedule 3 (see Section 2.0) which only permits dwellings if the number of resort rooms/units exceeds the number of dwellings. This is a significant constraint on the ultimate residential yields which can be achieved on the site.

A three (3) storey height limit also applies and again this is a significant limiting factor on ultimate yields. As part of the package of planning initiatives accompanying the original development application, the applicant proposed to limit building heights to 2 storeys for dwelling houses and raise the levels of the eastern part of the site. Council has exhibited a draft Local Environmental Plan Amendment to formalise this arrangement.

### 5.1.2 State Environmental Planning Policy No. 5 - Seniors Living

This form of development is permissible, with consent, under Tweed LEP 2000. The development standards and design criteria in this instance are therefore not mandatory, but consent authorities normally apply them as a guideline.

### **5.1.3 State Environmental Planning Policy No. 14- Coastal Wetland**

The western part of the site adjacent to Cudgen Creek is mapped as a wetland under the provisions of this policy. The mapped area and significant buffers have been transferred to Tweed Shire Council at not cost as an environmental reserve and in addition to usable passive open space required under Development Control Plan No. 16/Section 94 Plan No. 25.

### **5.1.4 State Environmental Planning Policy No. 55 - Remediation of land**

In accordance with the provisions of this plan, the site has been remediated to address elevated radiation levels.

### **5.1.5 State Environmental Planning Policy No. 71 - Coastal Protection**

The subject land is within the coastal zone and therefore the provisions of this policy apply. Clause 18 of the Policy provides that the consent authority must not grant consent for a subdivision of land within a residential zone involving more than 25 lots unless the Minister has approved a master plan and the consent is consistent with that plan. Alternatively, the Minister may waive the requirement for a master plan.

The Salt development consent pre-dates the introduction of State Environmental Planning Policy No. 71, however if any further applications are lodged seeking more than 25 lots then the provisions of this policy would apply

### **5.1.6 State Environmental Planning Policy - Major Projects**

In summary, under the provisions of this policy, the Minister is the consent authority for certain types and classes of development including construction projects with an investment value of more than \$50 million, recreation or tourist facilities within the coastal zone, buildings over 13m in height and subdivisions of land into more than 25 lots.

### **5.1.7 North Coast Regional Environmental Plan, 1988**

In summary, Clause 43 of this plan provides that the Council shall not grant consent to development for residential purposes unless it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land, and that road widths are not excessive for the function of the road.

In pursuance of this clause, the North Coast Urban Planning Strategy (Department of Urban Affairs and Planning, 1995) provides for a target yield of 15 dwellings per ha.

This policy obviously requires proponents and Councils to optimise yields.

## **5.2 Policy and Strategies**

### **5.2.1 NSW Coastal Policy**

This Policy contains a number of strategic actions relating to stormwater quality, coastal hazards, development adjacent to estuaries, Acid Sulfate Soils, North Coast Design Guidelines, design and locational principles and public foreshore access. The Salt development complies with the relevant requirements of this policy.

### **5.2.2 Tweed 2000+ Strategic Plan**

This plan is referred to in the Tweed LEP 2000 and contains general provisions relating to the provision of tourism infrastructure on the Tweed Coast and the creation of sustainable employment positions. The Salt development is generally consistent with this plan.

### **5.2.3 Tweed 04/24 Strategic Plan**

This plan contains similar objectives to the previous strategic plan.

## **5.3 Development Control Plans**

### **5.3.1 Development Control Plan No. 5 - Development of Flood Liable Land**

Part of the site adjacent to Cudgen Creek in its original state was below the design flood level however in accordance with the terms of the subdivision consent it has been filled to the required level in accordance with this Development Control Plan.

### **5.3.2 Draft Development Control Plan No. 6 - Development of Land Liable to Coastal Erosion**

The Salt site complies with this plan in that the 7(f) Coastal Hazard zone on the eastern side of the site has been dedicated to Council and normal setbacks will apply.

### **5.3.3 Development Control Plan No. 16 - Subdivision Manual**

This is a comprehensive and contemporary shire wide plan which provided details of Council's design standards and procedural requirements relating to all forms of subdivision. In particular, the Development Control Plan requires the provision of a master plan in certain circumstances prior to approval of any development. The plan contains considerable details in relation road hierarchy, road widths, provision of open space, provision of buffers, stormwater management and provision of infrastructure.

### **5.3.4 Development Control Plan No. 39 - Energy Smart Homes Policy**

In accordance with the provisions of this policy all proposed allotments must be designed and oriented to achieve energy efficiency principles.

### **5.3.5 Development Control Plan No. 45 - Socio-economic Impact Assessment**

In accordance with the provisions of this plan, a socio-economic impact statement must accompany certain development applications depending on their scale and nature. It should be noted that socio-economic impact statements accompanied the original Salt subdivision development application, the Outrigger Resort development application and the Peppers Resort development application.

### **5.3.6 Development Control Plan No. 48 - Tweed Coast Building Heights**

This Development Control Plan contains prescriptive and performance based criteria relating to building setbacks, building heights and building envelopes, with the objective of controlling the height, bulk, scale and density of development.

### **5.3.7 Development Control Plan No. 51 - Tweed Coast Strategy**

This is a broad strategic plan which provides general planning principles. The Salt development is consistent with this plan.

## **5.4 Section 94 Plan Contributions Plans**

Contribution plans adopted by Council pursuant to section 94 of the Environmental Planning and Assessment Act, 1979 and applicable to the site are as follows: -

- Section 94 Plan No. 4 - Tweed Road Contribution Plan
- Section 94 Plan No. 6 - Street Tree Planting in Residential Areas
- Section 94 Plan No. 11 - Library Facilities
- Section 94 Plan No. 12 - Bus Shelters
- Section 94 Plan No. 13 - Cemetery/Crematorium Facilities at Eviron Road, Duranbah
- Section 94 Plan No. 15 - Developer Contributions for Community Facilities
- Section 94 Plan No. 16 - Emergency Facilities (Surf Lifesaving)
- Section 94 Plan No. 18 - Council Administration Offices and Technical Support Facilities
- Section 94 Plan No. 22 - Cycleways
- Section 94 Plan No. 25 - Kings Beach North
- Section 94 Plan No. 26 - Shirewide Regional Open Space

Section 94 Plan No. 25 - Salt has been exhibited as an amended draft to reflect the specific approved layout for the Salt site and it is anticipated that the amended plan will come into force in the near future. This will provide Council with the opportunity to levy contributions for additional yield in respect of structured open spaced (playing fields) and to require the provision of additional functional and embellished passive open space on this site in the event that yields are increased.



## Conclusion

In view of the fact that the subdivision component is 70% complete and both major resorts are either complete or nearing completion there is little point in pursuing a new Master Plan and DCP for the remaining undeveloped parcels of land.

## Recommendation 21 – page 978

1. That the Council's Administrators give consideration whether Stacks/Northern Rivers has carried out its retainer to represent council's interests at the Public Inquiry.
2. That the Council's Administrators give consideration whether Stacks/Northern Rivers has breached its retainer to represent council's interests at the Public Inquiry and, if so whether it should seek tenders for the provision of legal services from another or other legal firms.

## Engagement of Solicitors for Public Inquiry

Council at its meeting of 19 January 2005 resolved that:

- "1. Council advises its intention to engage the services of Stacks- Northern Rivers to represent Council interests as a corporate body at the Tweed Shire Council Public Inquiry under the terms of brief as follows:
  - By direction of Council and/or the General Manager to prepare or assist in the preparation of submissions to the Public Inquiry.
  - To regularly review the daily transcripts from the Public Inquiry and advise Council as appropriate, to a suggested course of action to take.
  - To represent the Council at proceedings as determined either by Council or the General Manager.
  - To report to the General Manager on matters relating to individual Councillors and staff that may require further attention.
2. Council requires the General Manager to negotiate with Stacks- Northern Rivers on costing for the representation and report this to Council.

*FOR VOTE – Unanimous"*

## Tweed Shire Council Public Inquiry – Legal Services

Council at its meeting of 20 April 2005 resolved that: -

- "1. This report be received and noted.
2. The Public Inquiry legal costs be included in the next Quarterly Budget Review.

*FOR VOTE – Unanimous"*

### **Legal Services Tender**

Council at its meeting of 9 September 2003 resolved that: -

*"Council's legal services contract be awarded to Stacks Tweed Heads for a period of three years commencing from 7 September 2003."*

The contract commenced on 7 September 2003 and is due to conclude on 6 September 2006.

Information obtained from the contract document – Item 10.1

*"The Contractor acknowledges that this Contract is not exclusive and that the Council may use other Contractors to provide the Services."*

It is suggested that Council should continue with the legal services contract with Stacks until 6 September 2006, but could consider using other Contractors to provide any legal services. However, if the option to consider using other Contractors is implemented, then Council must adhere with the provisions of its Procurement Policy in the sourcing of quotations for each legal service.

It is envisaged that the new legal services tender to be effective from 7 September 2006 will contain an option to appoint a panel of solicitors, with the tender process anticipated to commence March 2006.

### **Conclusion**

That Council continues with the legal services contract with Stacks until 6 September 2006.

### **Recommendation 21 / 2**

It is suggested that prior to Council Administrators giving consideration whether Stacks Northern Rivers has breached its retainer to represent Council's interest at the Public Inquiry, the Administrators should meet with Stacks Northern Rivers and the General Manager to discuss this matter.

### **Conclusion**

That the Administrators meet with Stacks Northern Rivers, and the General Manager, to discuss whether Stacks Northern Rivers has breached its retainer to represent Council's interest at the Public Inquiry.

**Recommendation 23**

In relation to this recommendation Council has written to the Department of Local Government (letter attached) seeking clarification on the status of this recommendation and a formal response has not yet been received.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

- [1. Letter to Department of Local Government \(DW 1285374\)](#)
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## REPORTS FROM 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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**2 [PD] Amendment to Section 94 Contribution Plan No 16 - Emergency Facilities (Surf Lifesaving)**

**ORIGIN:**

**Strategic Town Planning**

**FILE NO: GT1/S94/16**

**SUMMARY OF REPORT:**

Section 94 Contribution Plan No 16 Emergency Facilities (Surf Lifesaving) requires amending for the following reasons:

- The addition of equipment and facilities for the SALT Surf Lifesaving Club (\$59,055);
- The deletion of the proposed emergency facilities at Kingscliff South (to be replaced by the SALT facility);
- Deletion of the separate contribution levy for the NSW Tourism Commission land, SALT, Seaside City, Kings Forest and Casuarina Beach. One levy will apply for the whole of the Shire, rather than under the current plan where there is one levy for the above areas and a separate levy for the rest of the shire;
- The new contribution rate for the whole of the shire is as follows:
  - Per residential lot or detached dwelling: \$200 (currently \$207 for the rest of the shire)
  - Per medium density dwelling: \$131 (\$136)

**RECOMMENDATION:**

**That Council endorses draft Amendment of Section 94 Contribution Plan No 16 – Emergency Facilities (Surf Lifesaving) be placed on public exhibition for 28 days in accordance with Clause 28(a) of the Environmental Planning and Assessment Regulations.**

**REPORT:**

Section 94 Contribution Plan No 16 Emergency Facilities (Surf Lifesaving) requires amending for the following reasons:

- The addition of equipment and facilities for the SALT Surf Lifesaving Club (\$59,055);
- The deletion of the proposed emergency facilities at Kingscliff South (to be replaced by the SALT facility);
- Deletion of the separate contribution levy for the NSW Tourism Commission land, SALT, Seaside City, Kings Forest and Casuarina Beach. It is considered that all the residents of the Shire have an opportunity to use the beaches adjoining these areas, and therefore should contribute to the facilities and equipment to service these beaches. In addition the population estimates used in the current plan for Kings Forest and Seaside City will not, at this stage, be reached in the timeframe originally envisaged in this plan. It is therefore more practical to include a whole of Shire population estimate for the plan.

One levy will apply for the whole of the Shire, rather than under the current plan where there is one levy for the above areas and a separate levy for the rest of the shire.

- The new contribution rate for the whole of the shire is as follows:
  - Per residential lot or detached dwelling: \$200 (currently \$207 for the rest of the shire)
  - Per medium density dwelling: \$131 (\$136)

Draft Amendment of Section 94 Contribution Plan No 16 – Emergency Facilities (Surf Lifesaving) is required to be placed on public exhibition for 28 days in accordance with Clause 28(a) of the Environmental Planning and Assessment Regulations.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

1. [Draft Section 94 Contribution Plan No 16 - Emergency Facilities \(Surf Lifesaving\) \(DW 1286795\)](#)



**3 [PD] Draft Tweed Local Environmental Plan 2000, Amendment No 57  
(Koala Beach Stage 7)**

**ORIGIN:**

**Strategic Town Planning**

**FILE NO: GT1/LEP/2000/57 Pt2**

**SUMMARY OF REPORT:**

On 2 June 2004 Council resolved to prepare a draft Local Environmental Plan (LEP) to rezone Lot 919, DP 1077493 (Stage 7, Koala Beach) to enable the development of the land for a three lot subdivision and dedicate environmentally sensitive land to Council. GeoLINK, on behalf of Council, have prepared a draft Environmental Study and draft LEP for Council's consideration prior to exhibition. GeoLINK have concerns regarding future owners riding horses through adjacent forested areas and the environmental impacts that might result from that. Given the ecological and environmental quality of adjoining forest areas, it is recommended that the keeping of horses be prohibited on this land. This conclusion has been reached by GeoLINK following extensive consultations with the Department of Environment and Conservation; and the submission of contrary research by the proponents.

Darryl Anderson Pty Ltd, on behalf of the proponents, has provided material in support of the keeping of horses on the subject land.

The issue before Council concerns the enforcement of potential impacts; and not the identification of appropriate land use zones and controls. Having regard to the limited number of animals to be kept on the land, the fencing of the land, and Council future ownership of the adjoining land, the keeping of horses should not be prohibited on the land. Accordingly, a S65 Certificate will be required from the Department of Planning to enable Council to exhibit the Environmental Study and draft LEP.

**RECOMMENDATION:**

**That:**

- 1. Council amends the draft Local Environmental Plan prepared by GeoLINK to enable up to 16 horses to be kept on that part of the land which is not proposed for environmental protection.**
- 2. Council seeks a Section 65 Certificate from the Regional Director, Department of Planning, to exhibit the amended Draft Local Environmental Plan.**

## REPORT:

### Introduction

As part of the ongoing planning for Koala Beach, on 2 June 2004 Council resolved to prepare a draft Local Environmental Plan (LEP) to rezone Lot 919, DP 1077493 (Stage 7, Koala Beach) to enable the development of the land for a three lot subdivision. The land is zoned 1(a) Rural, 7(a) Environmental Protection (Wetlands and Littoral Rainforest) and 7(c) Environmental Protection (Habitat).

GeoLINK, on behalf of Council, have prepared a draft Environmental Study and draft LEP for Council's consideration prior to exhibition.

### Draft Environmental Study

GeoLINK have concluded as follows:

*"The major constraints to the future development of the land relate to the ecological/conservation values of the majority of the site and surrounding land.*

*The site is strategically located between the areas of environmental value previously dedicated to Council and the forested areas north of Round Mountain Road. Protection of the site's ecological values is therefore not only of benefit for the site itself, but will strongly assist in maintaining important wildlife and ecological corridors on the Tweed Coast.*

*The proponents have recognised these values and the development proposed provides a significant compromise when considered in light of the original intentions for the Koala Beach Estate. The residential development proposed will be limited to existing cleared areas, with minimal clearing required for bushfire protection. The most heavily vegetated parts of the site will be dedicated to Council as part of proposed Lot 920, with the remaining vegetation protected by way of environmental protection zoning (and/or fencing and covenant).*

*DEC have recommended that the whole of the site be zoned environmental protection, with an enabling clause to allow the two dwellings as proposed. There are concerns that the zoning of existing cleared areas for environmental protection would be inconsistent with the objectives of such zoning. The cleared parts of the site do not warrant environmental protection in their own right, based on their ecological values. DEC have recognised this by their acknowledgment that the two dwelling sites could proceed as proposed within the cleared parts of the site.*

*DEC have also recommended that grazing and the keeping of livestock be prohibited on the land as a whole. As indicated above, the applicants have suggested that future owners will want to keep a small number of animals on the land (limited to 8 to 10 per lot). This has been assessed as part of the ecological report submitted in support of the application, which has concluded that such a small number of animals will not result in significant ecological impacts.*

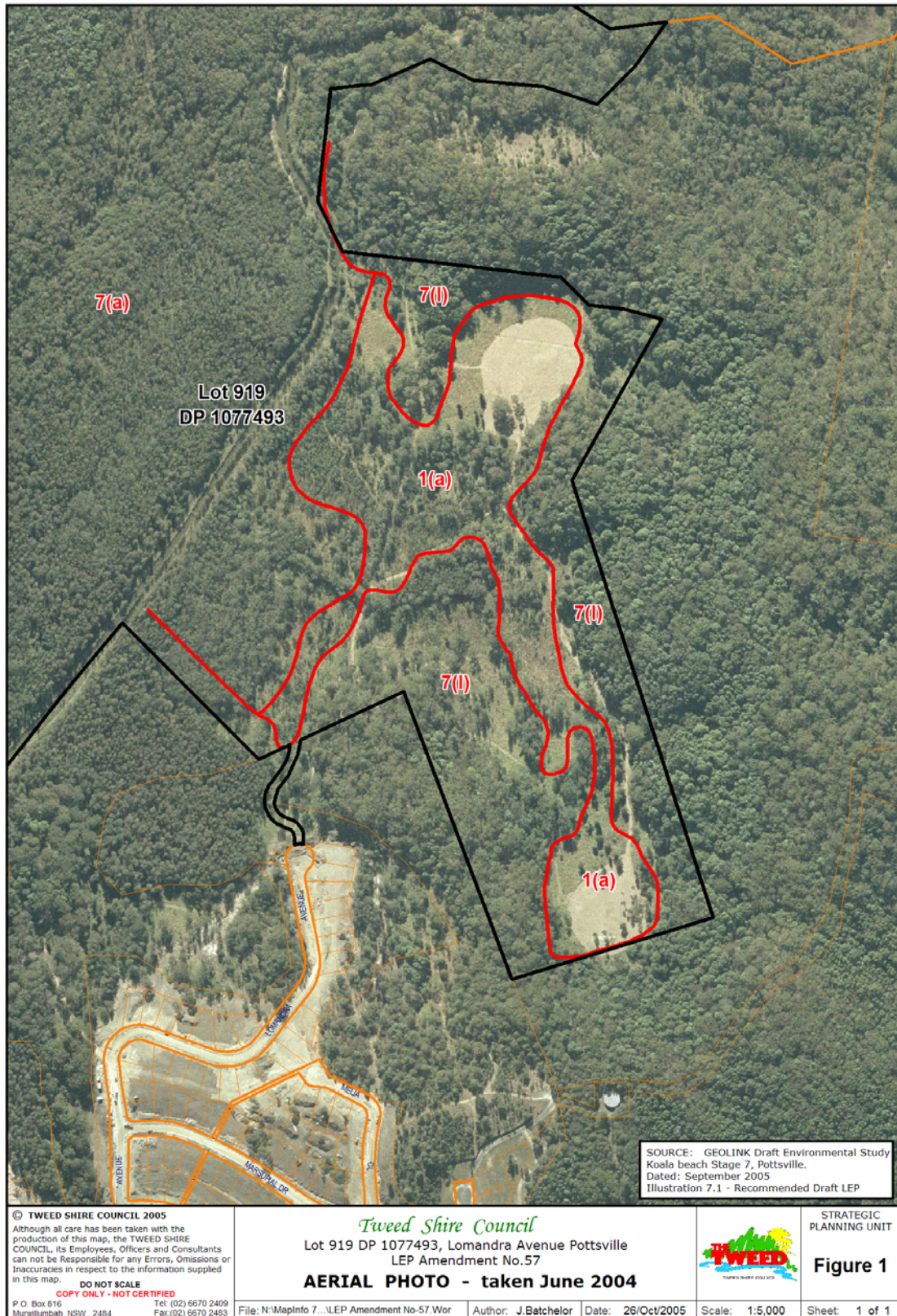
*Further, the keeping of a small number of animals will assist future owners to keep the grass levels low within the cleared parts of the site, thereby assisting to maintain a reduced bushfire risk for the dwelling sites.*

*However, legitimate concerns exist regarding future owners riding horses through adjacent forested areas and the environmental impacts that might result from that. Given the ecological and environmental quality of adjoining forest areas, it is recommended that the keeping of horses be prohibited on this land.*

*On balance of all these issues, it is the recommendation of this LES that the existing zone boundaries be adjusted as proposed by the land owner, to facilitate the subdivision and development of the land as proposed, with the exception that the 7(l) Environmental Protection zone be extended within the western part of proposed Lot 771 to encompass the 'island' of vegetation that exists in this locality. This vegetation constitutes an Endangered Ecological Community, and was proposed by the applicant to be protected by way of fencing and covenant on title. The fencing is supported, but the importance of the vegetation warrants a stronger form of protection than the proposed covenant, hence the recommendation that it be included with the environmental protection zone".*

The proposed amendment to the zone map is set out in Figure 1. The contentious issue is the prohibition of horses on the land. This conclusion has been reached by GeoLINK following extensive consultations with the Department of Environment and Conservation; and the submission of contrary research by the proponents.

Figure 1





## Response by Proponents

Darryl Anderson Pty Ltd, on behalf of the proponents, has provided material in support of the keeping of horses on the subject land, which is summarised as follows:

- The land to be grazed will be fenced from the Environmental Protection zoned land.
- At the onsite meeting between Council, DEC (John Allen) and ourselves in March 2004, it was agreed that DEC would support our proposal which was that we would limit the number of horses on each "Ranch Site" and we would restrict those numbers by Covenant, plus we would possibly covenant that no commercial horse riding activities would be allowed on these sites.
- DEC has issued a Licence for this site allowing the fencing of the environmental areas and the establishment of cattle on the land to control the growth of exotic grasses. This activity is now established on the site.
- The DEC are happy to give us a Licence to run cattle but wish to permanently prohibit hooved animals on this land. A double standard.
- We have submitted evidence from Aspect North Environmental Consultants confirming that it is a normal practice to have horses in properly fenced areas adjacent to environmental lands.
- In regards to policing of the proposed horses on these sites, Koala Beach is unique as it has a formal Environmental Management Committee formed and funded (by a \$2 per week per lot levy). This committee includes representatives from Council, the Australian Koala Foundation and residents (also Ray Group currently). This committee is charged with the responsibility of ensuring that all environmental controls are maintained (and it is funded to do so) and this includes the policing of "the no dogs and cats restriction" and can easily encompass the policing of ensuring that the horses in stage 7 remain permanently contained within the fenced area.

Advice from the proponent's ecological Consultants, Aspect North, has recommended limiting to eight (8) animals for each lot 771 and 772. The detailed advice provided by Aspect North concludes as follows:

*"The environmental impacts associated with horse riding in natural areas are well recognised. The experience of DEC shows that a co-operative management approach between neighbours can ensure that hooved animals can be successfully excluded from areas of high conservation value without the need to impact upon the adjoining landholders.*

*Appropriate and well maintained stock-proof fencing is sufficient to exclude hooved animals from these high conservation areas. High quality stock-proof fencing i.e. electrified 5-strand fencing has already been erected in Stage 7. The current DEC Section 95(2) Certificate permits cattle grazing in the cleared areas of Stage 7.*

*The non-commercial ownership of horses in this area is likely to lead to a lower level of impact than exists currently. Additionally, appropriate management and*

*education can ensure that hooved animals do not impact upon adjacent environmental protection areas.*

### **Recommendations**

*The following recommendations are made:*

- 1. That hooved animals (horses) be permitted within Stage 7;*
- 2. That hooved animals be restricted to the areas currently grazed;*
- 3. Commercial horse riding activities be prohibited in Stage 7 as a condition of consent and that this be enforced by way of an instrument under Section 88b of the Conveyancing Act 1919;*
- 4. Permanent stock-proof fencing be maintained between areas of high conservation value, areas zoned or proposed for environmental protection and areas maintain for grazing purposes;*
- 5. The riding of horses within the adjoining natural areas proposed for the purposes of environmental protection be prohibited; and*
- 6. An education program be developed in co-operation with Tweed Shire Council, the DEC and the proponent to promote appropriate horse riding behaviour in the area".*

### **Way Forward**

As highlighted by GeoLINK the critical issue is the concern that horses from the grazed area will be ridden through the adjacent forested areas which Council would have difficulties in enforcing. Consequently, the issue before Council concerns the enforcement of potential impacts; and not the identification of appropriate land use zones and controls. In that regard it should be noted that:

- The number of horses to be kept on the land is limited;
- The land will be fenced;
- The adjoining land will be in Council's ownership following dedication from the Ray Group thereby making enforcement easier.

If Council accepts the GeoLINK recommendations, Council has the necessary delegation to issue a Section 65 Certificate to enable the LEP Amendment to be placed on exhibition. If dissatisfied the proponents will be able to make a submission on the exhibited Plan.

If Council concludes that on balance the keeping of horses on the subject land is acceptable then in view of the objection from the DEC it will be necessary for Council to seek a Section 65 Certificate from the Department of Planning before the amendment could be exhibited. The position taken by DEC would constitute an unresolved objection and therefore Council could not use its delegation to issue a S65 Certificate.

**Conclusion**

Having regard to the limited number of animals to be kept on the land, the fencing of the land, and Council future ownership of the adjoining land, the keeping of horses should not be prohibited on the land. Accordingly, a S65 Certificate will be required from the Department of Planning to enable Council to exhibit the Environmental Study and draft LEP.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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