



AGENDA

PLANNING COMMITTEE MEETING Wednesday 30 November 2005

Chairman: Ms Lucy Turnbull

**Administrators: Mr Garry Payne
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 16 November 2005

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Minutes of the Planning Committee Meeting held Wednesday 16 November 2005 (DW1298480).
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REPORTS THROUGH ACTING GENERAL MANAGER

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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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

ORIGIN:

Development Assessment

FILE NO: DA05/0924 Pt1

SUMMARY OF REPORT:

It is recommended that the existing building be approved for the storage of bulky goods associated with the existing engineering business which provides essential telecommunication installation and maintenance services within the local area. The building has been used for similar purposes for a number of years and no extension or modification is proposed. It is adjacent to a mix of commercial and service type land uses and the planning assessment is that this application, if approved, will not unreasonably impact upon the existing streetscape or local amenity. A similar "bulk store" was approved by Council recently at 44 Recreation Street. No change to the zoning is proposed under the current Amendment 21 of the Tweed Local Environmental Plan. Any commercial operation will generate some adverse impacts, but it should be noted that only one resident has raised complaints and lodged an objection to the application for the use which has been in operation for a number of years.

RECOMMENDATION:

That Development Application DA05/0924 for the use of existing premises as a bulk store at Lot 21 Section 4 DP 2379, No. 56 Recreation Street, Tweed Heads be approved, subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos A1-2 dated July 2005, except where varied by the conditions of this consent.

[GEN0005]

2. All existing essential fire safety measures are to be certified by a qualified person to the effect that each of the fire safety measures has been assessed and were found to be performing to a standard not less than that to which it was originally designed.

[POC0525]

USE

3. No items or goods are to be stored or displayed at the front or side of the building so as to be visible from the street.

[USE0445]

4. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust, fumes or the like.
[USE0125]
5. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of Council's Director of Environment and Community Services where necessary or required so as to prevent the spill of light creating a nuisance to neighbouring or adjacent premises.
[USENS01]
6. All loading and unloading is to occur within the property boundary.
[USENS02]
7. All deliveries to and from the bulk store are to occur between the hours of 7:00am and 5:00pm Monday to Saturday. No deliveries outside these times are permitted without the prior written approval of Council's Director of Planning and Development, unless it is an emergency.
[USENS03]

REPORT:

Applicant: Downer Connect Pty Ltd
Owner: Morgan Surfing Accessories Pty Ltd
Location: Lot 21 Section 4 DP 2379 No. 56 Recreation Street, Tweed Heads
Zoning: 3(b) General Business
Cost: \$1

BACKGROUND:

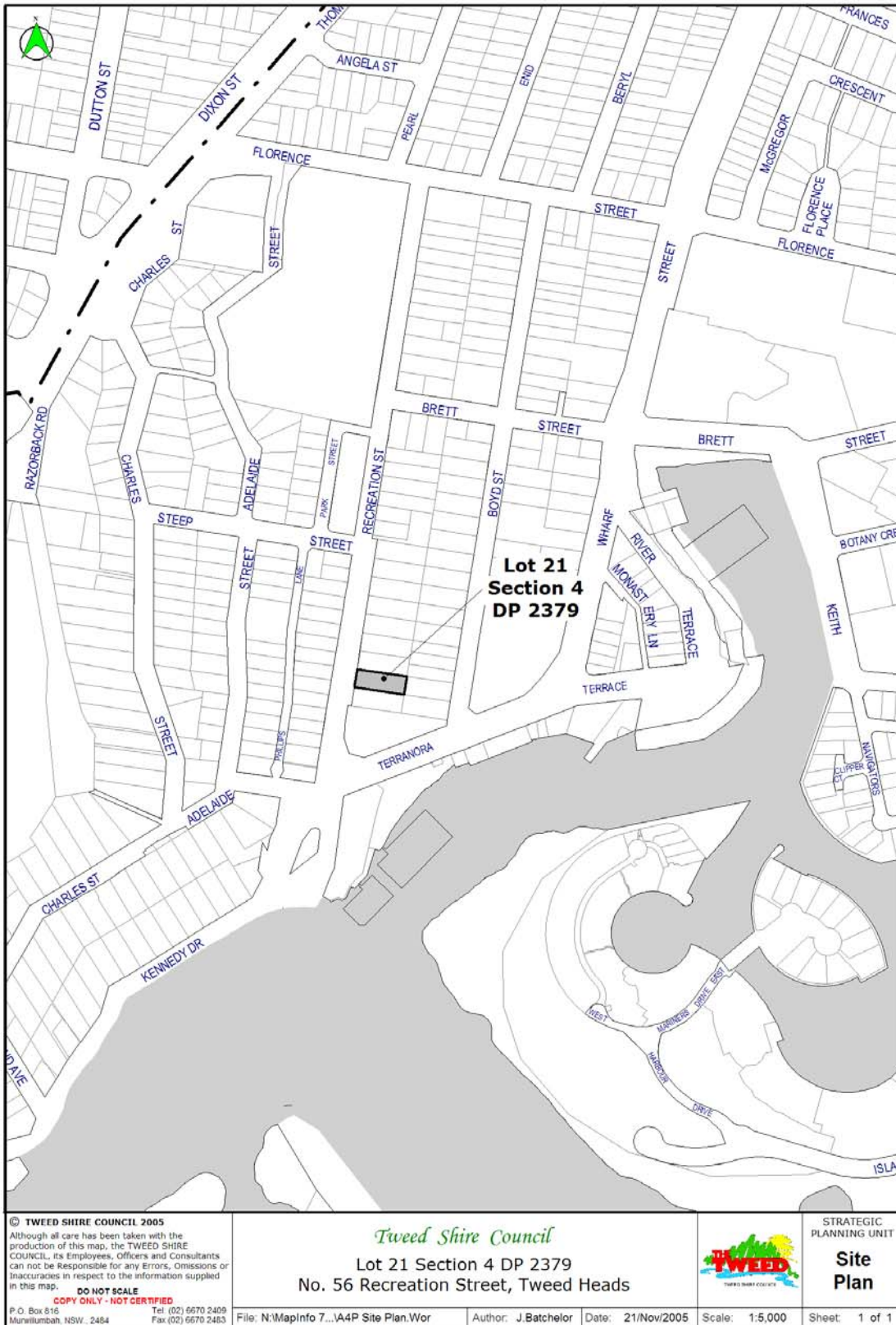
- Prior to 1990, a second hand furniture business operated within the warehouse building for several years. Although there is no record of consent, a sign for “New & Used Furniture” was approved by Council in May 1993.
- An application for a warehouse displaying and selling steel was approved in March 1997. Cutting and bending of steel was permitted, but only within the building.
- An application for a warehouse for wholesale surfing accessories was approved in September 1997.
- Following a complaint in September 2004 about the new lessor [Downer Engineering] storing materials in the front car park, a meeting was held on site with the management who agreed to comply with the approved plan and store all materials at the rear or inside the building and reinstate car parking on the approved car parking area at the front. The company complied with Council’s directive in March 2005 by undertaking works to seal the rear section to allow storage of bulky cabling and pipes, and reinstate car parking in the front area.

PROPOSAL

- The applicant proposes to use the existing premises as a bulk store.
- The key operation of the company is the installation and maintenance of telecommunications networks. These works occur off site.
- Bulky items such as cabling and installation equipment are stored on site – principally inside the existing warehouse.
- Two staff only occupy the site, with field crew primarily being employed in the field. These employees travel direct from their home to the field and only frequent the site sporadically to obtain materials.
- The building is generally used from between 7am and 4pm Monday to Friday, but occasional access is necessary in emergency/crisis situations on a needs basis.

The site is situated 75m from the junction of Wharf Street and Recreation Street. The lot comprises an area of 1088m². The land is flat and predominantly occupied by an existing warehouse with associated office at the rear. There is hard standing parking at the front and rear of the lot. A sealed driveway exists along the northern side boundary.

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

(a) (i) The provisions of any environmental planning instrument

Tweed Local Environmental Plan 2000 (TLEP)

Clause 11 – Zone Objectives

The subject land is zoned 3(b) General Business under the provisions of the TLEP. The proposed 'Bulk Store' is permissible with consent.

The **primary objectives** for the zone are:

“to provide business centres in which the community’s shopping, business, welfare and social needs can be met

to provide business locations within residential areas, and to ensure that the scale and type of development is compatible with the character and amenity of the surrounding residential areas.”

The secondary objectives are:

*“to provide tourist orientated development
to encourage upper floor residential or tourist accommodation.”*

The applicant states that the proposal is entirely consistent with a primary objective of the zone in so far as it utilises an existing commercial site which has facilities suitable to cater for the intended use with no additional improvements. They contend that given the relatively unobtrusive nature of the use and the ability to screen the stored materials from the street, the use is compatible with the surrounding commercial and residential land uses.

Response:

The current building is well maintained – not dilapidated or ready for demolition. The proposed use of these existing premises is considered to be acceptable and consistent with both the existing facility and the surrounding mix of commercial and public uses. Any assessment needs to balance the preferred land use with the existing site constraints and development. No intensification or improvements are proposed. The existing building is setback ensures a relatively unobtrusive street presence. The landscaping is limited but includes mature palm trees. Additional landscaping can be required to assist any screening if necessary. There is minimal visual impact as the materials are stored either inside the building or at the rear. The use involves no processing or noisy activity – it is primarily a store for bulky goods where only two employees work on site, with the remainder working in the field. The proposal is accordingly considered to be compatible with surrounding commercial and residential land uses.

The application must also satisfy the provisions of Clause 8(2).

Clause 8(2) assessment:

"(2)(a) *the development is necessary for any one of the following reasons:*

- (i) It needs to be in the locality in which it is proposed to be carried out due to the nature, function and service catchment of the development;*
- (ii) it meets an identified urgent community need;*
- (iii) it comprises a major employment generator, and..."*

The applicant states that the building is an existing lawful commercial building which is well maintained, structurally sound and suitable for the proposed use. The site is relatively central and accessible to the operation which is essential to enable efficient and prompt access and maintenance of local telecommunications network. As it only involves a change of use, it satisfies the subclause.

Response:

The premises were leased by Downer Engineering as the site was considered to be reasonably central to their service area and where their staff lived (as they travel direct to the work site from home). As part of their core business is efficient accessibility for local servicing responsibilities and a prompt response time in cases of emergency, it is considered to satisfy the requirements.

"(b) there is no other appropriate site on which the development is permitted with consent (other than an advertised development) in reasonable proximity, and..."

The applicant states that they had investigated the availability and suitability of a range of sites in the Tweed Heads and South Tweed Heads area. They utilised real estate agents (Ray White Commercial Real Estate and LJ Hooker Real Estate) as well as Internet based searches. The instruction criteria included: short lead time to start up from when awarded telecommunication contract for the area; need for offices and meeting room on site; undercover storage for stores; ready availability of data and phone communications; asphalt area for forklift; suitable pricing and lease terms; close to commercial and retail facilities; close to mobile field staff work site to allow efficient access to stores; central to telephone installation and maintenance work on behalf of their client and being based in the community they serve. In addition, the site needed to be central to their mobile work force who travel to and from their homes to the field jobs. After considering all the locational requirements, this site was assessed as being medium to high and the preferred site for the bulk storage of goods.

Response:

In view of the shortage in availability of suitable sites according to the company's criteria at that particular time within that particular local catchment area, the company's specific locational needs should be taken into account. As the proposal is for a change of use only, it is considered to satisfy this clause.

"(c) the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and..."

The applicant states that no change to the building or site is proposed. The use would be similar in character to previously approved uses including a paint store and the wholesale and retail of surfing accessories.

Response:

Given the fact that there will essentially be no material change to a building where its former uses were lawfully established, there should be no greater impact or change in local character to that which existed immediately prior to the applicants occupying the building. It would not affect the existing character of the streetscape which reflects a mix of land use. More specifically, its scale is consistent with the adjoining fruit and vegetable market, Police station/courthouse, auto/tyre service centre, maintenance workshop and wholesale meat outlet. It should be noted that Dental Practice is situated immediately opposite on the residential side of Recreation Street which adds to the local mix of land use. This clause is clearly satisfied.

"(d) the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located."

The applicant states that the aims of the LEP include "to encourage sustainable economic development of the area". It is argued that this engineering business installs and supplies maintenance to the essential local telecommunications network. The infrastructure requires convenient and accessible bulk storage and ancillary administrative support services to ensure they continue to operate efficiently. The facility is an integral part of the company's core business.

Response:

The proposition that the proposal encourages economic development and contributes to the Tweeds 'economic vitality' is accepted. It is acknowledged they employ a large staff and provide extensive field work in both the installation and maintenance of a valuable community asset. Satisfaction of the Primary Objectives are discussed further above and are considered to have been adequately met.

Clause 15 – Essential Services

All required infrastructure and services are currently connected to the site and adequate to service the proposed use. No new services are required.

Clause 17 – Social Impact Assessment

The proposed use satisfies the expectations and objectives of the TLEP 2000 and will facilitate the maintenance of essential telecommunications networks. It offers local employment and services local infrastructure and community assets.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

None applicable.

(a) (iii) Development Control Plans (DCP's)

DCP No.2 – Site and Access Parking

The parking rate for Bulk Store is 1 space per staff member, as the use envisages no customers visiting the site. As the operation of the business requires only two full time staff, two spaces are required.

The hardstanding car park at the front provides for 4 cars with a further four tandem spaces to the rear without affecting on site circulation or manoeuvrability.

Accordingly, the provision of 8 on site spaces satisfies the Code's requirements for the site.

DCP No.18 – Tweed Heads

The aims and objectives for the Southern Precinct are:

*“cater for businesses that are not preferred in the Central Precinct;
provide for tourism support businesses that reinforce the local economy;
reinforce the commercial role of Wharf Street;
provide development incentives that result in a high standard of mixed use commercial and residential development
encourage a local building aesthetic that responds favourably to the sub-tropical climate, retains important view corridors and reflects the maritime location and history of the locality.”*

The Preferred Development:

“Mixed use developments orientated towards Wharf Street, where achievable, are the preferred forms of development in this precinct. Ideally, lots should be consolidated to form larger development sites with Wharf Street frontages where possible. The precinct will cater for commercial uses that are not appropriate in the central precinct, such as car hire businesses, motels and motor showrooms.”

The use is not listed amongst the uses considered to be “preferred development”, however it is an acceptable activity within an existing building. Until such time as the building is demolished and/or site amalgamated or rationalised, it appears to be a reasonable interim use. The warehouse has limited potential for other non-commercial uses.

On the basis that it is not proposed to expand the existing structure nor introduce any improvements, it will not limit future development options nor prejudice the site’s potential. The DCP prefers the ultimate amalgamation of sites to larger, mixed use sites orientated to Wharf Street. This is not a practical option for this particular building and site at this point in time, although future possibilities might include incorporation with the adjacent commercial site (Scott’s Market Basket).

In conclusion, the proposed interim use for the existing building is not viewed as inconsistent with the objectives for the Southern Precinct. Any inconsistency with the Precinct’s preferred development options can be justified on the basis that the proposal is a reasonable and economic interim use.

(a) (iv) Any Matters Prescribed by the Regulations

None applicable.

(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality

Noise:

The operation is considered to have limited environmental impact as no processing, production or manufacturing occurs on site. It is principally a storage facility – a warehousing base from which bulky cabling, piping and telecommunication components are delivered, stored then despatched for fieldwork and maintenance. The building is primarily quiet – apart from the use of a forklift to unload/load trucks. This loading is always done on site.

Traffic:

Apart from the movement of delivery trucks to and from the store, very little traffic or vehicular movement occurs on site. Traffic movement related to on site staff parking is limited to one morning and evening ingress/egress by the two staff. All other employees drive directly from home to the off-site works. They only occasional return to the store for materials on an intermittent basis and always park on site. All unloading/ loading occurs on site.

As there is no retailing, the general public do not frequent the site. Consequently Recreation Street is well able to manage the limited traffic generated – especially when compared to the constant customer turnover associated with the adjoining retailing premises and the Court House/Police Station, as well as the dental practice directly opposite.

Visual Appearance:

The building is maintained to a suitable standard being freshly painted. All the materials which were formerly stored at the front of the site in the initial stage of the company occupying the site have been relocated to the rear and inside the warehouse. No materials are stored outside or visible from the street. The business is quite presentable and does not detract from the streetscape.

It should be noted that the photos the objector submitted indicating bulk goods being stored at the front are not relevant nor reasonable as they were taken prior to Council becoming involved. The former management responded to Council's directive to comply with the approved plan and immediately tidied up the site. The visual presentation of the business has been tidy and well managed for most of 2005. This is not therefore considered to be a reasonable ground of complaint.

Dust and waste/pollutants:

The entire site is now sealed with acceptable drainage. There is no evidence of any undue environmental impacts created by waste or irritants leaving the site.

Hours of operation and general disturbance:

The store operates within normal business hours and creates no particular intrusive impact upon the adjacent residents. Even whilst undertaking occasional emergency works after hours or on week-ends, there is no record of complaint in respect to noise.

(c) Suitability of the site for the development

The building is existing and in sound repair/condition. It is probably premature to contemplate demolition and amalgamation with other sites. In its current configuration, and in view of the need for quick, efficient access to the local community which it services, the site is not considered inappropriate. The company had searched for other equivalent storage buildings within the vicinity for considerable time and had occupied the current premises for 12 months without local complaint (except for the resident who lodged the sole presentation).

It should be noted that the building has been historically used for a mix of uses over the years. One previously approved use for the warehouse was for the display and sale of steel where cutting and bending of the steel was permitted. The previous uses may have created more impact than the current use.

In relation to context, other local land uses create far greater impacts upon the local residential amenity than the proposed use. In terms of commercial presence, generation of noise and traffic, and general activity, the adjoining land use on either side and opposite are more detrimental.

The immediate neighbour to the south is a fruit and vegetable market which has been operational for many years. The northern neighbour is a public building in the form of a Court House and Police Station. Directly opposite is a Dental Practice. All three immediate neighbours generate large volumes of community activity and traffic compared to the quiet and low key use of the warehouse building for storage purposes. By contrast, the proposed bulk store has no direct customers coming and going – but rather the storage of bulky items for occasional delivery off site.

(d) Any submissions made in accordance with the Act or Regulations

The application was notified in accordance with DCP No.42 and one written submission was received within the 14 day public notification period from the 24 August and 7 September 2005. [A second letter was received a fortnight after the notification period closed, but in any event raised no new grounds of objection.] The submission can be summarised as follows:

Issue	Response
1. Applicants occupied site without consent for approximately two years.	The lessee considered that the use of the building for storage purposes was an acceptable use within a commercial building within a commercial precinct. Council was unaware of the occupation of the building until the objector first raised concerns 14 months ago.

	<p>Upon Councils direction, the operator did tidy up the site and fully co-operated by reinstating the front car park in accordance with the previously approved plan on file. They relocated the stored materials to the rear or inside the warehouse and tidied up the site. To be certain of its legal standing, it was considered appropriate to lodge a fresh Development Application. Downer Engineering has done so and is the subject of this report. Pending the outcome of this application, no further action is proposed in relation to the current use.</p>
<p>2. Application fails to satisfy primary and secondary objectives</p>	<p>As described above under (a)(i), the existing commercial building is flanked by a mix of commercial and service type land uses and occupies a site which caters for the intended use without requiring any further additions or improvements. The scale and character of the proposed bulk store is not considered to be incompatible with surrounding commercial and residential land uses. On balance, the proposal satisfies the primary objectives.</p>
<p>3. Incompatible with the Visions for Tweed Heads</p>	<p>The 'residential and tourist mecca' is a general statement of preference and aspiration for the whole of Tweed Heads. This precise site however is situated within a commercial/business zoning. Amendment 21 of the TLEP does not change this zoning.</p>
<p>4. Prohibited use within zone</p>	<p>Under the Tweed LEP 2000, a 'bulk store' is defined as "land used for the bulk storage of goods, where the goods stored or to be stored are not required for use in a shop or commercial</p>

	<p>premises on the same parcel of land or on an adjoining land in the same ownership.”</p> <p>A ‘depot’ is defined as “ land used for the storage or maintenance, or both, of plant, machinery, equipment, building materials and the like.”</p> <p>The proposed use of the existing building for the storage of bulky items [such as cabling, pipes and electrical components] would more properly be defined as a ‘bulk store’, compared to a depot which more often relates to open land/sheds used for storage and maintenance of vehicles and plant.</p> <p>Accordingly, it is not prohibited – but rather an Item 3 activity (allowed with consent).</p>
<p>5. Fits the definition of an industrial site</p>	<p>As described above, under the Tweed LEP 2000, it is more properly defined as a ‘Bulk Store’.</p>
<p>6. Unsuited for the proposed development</p> <ul style="list-style-type: none"> - Streetscape – unsightly hardstanding with no scope for plantings - on site parking – more vehicles park onsite than described in DA - on street parking – a few park in Street on occasions - access – no turning space so trucks reverse out - inadequate loading 	<p><u>Streetscape –</u> It is agreed that hard paving covers most of frontage with limited landscaping. However, these aspects of the site have been evident at least prior to 1997 when an application with photos identified them as having been already established. It may be appropriate to require a limited upgrade of the existing landscaping if warranted.</p> <p><u>On-site parking -</u> Any tandem parking of staff vehicles which may occur from time to time is not considered to be inappropriate as they are generally not moved all day. This arrangement optimises the</p>

<p>facilities – forklift can not operate on site</p> <p>- garbage collection areas – large skip and 3 garbage bins</p>	<p>site thereby minimising any imposition on local kerb side parking. As no general public visit the bulk store, the optimal use of sealed area on site parking is viewed as sensible, provided it does not restrict any on site unloading or manoeuvring of delivery trucks.</p> <p><u>On street parking –</u> All staff parking occurs on site. However, if on any occasion staff cars did park on street, provided they are parked legally and comply with local street laws, it should not become an issue which is granted determining weight.</p> <p><u>Access –</u> The access is approved and standard in width. It has not been observed or indicated that trucks have unloaded or loaded on public land or road reserve. The site has operated for years as a warehouse or similar and is likely to continue in at least the intermediate future.</p> <p><u>Inadequate loading facilities –</u> Discussed above.</p> <p><u>Garbage collection -</u> The skip is situated near the front corner of the building for convenient collection. This is not an unreasonable component in any commercial premise.</p>
<p>7. DCP No.2 – Site Access & car Parking Code</p>	<p>Discussed above under (a)(iii) and (b).</p>
<p>8. Clause 8(2)</p>	<p>Discussed above under (a)(i).</p>
<p>9. Insufficient detail on ‘interim use’</p>	<p>The commercial reality is that no individual landowner can force or know exactly when an adjoining property might become available. All that can be reasonably determined is</p>

	that the current building has not exhausted its useful, commercial life and is probably not an asset ready for demolition. A preferred option would be to ultimately consolidate parcels in the future as market forces dictate. In the interim, the proposed bulk storage is not an inappropriate use for the existing building.
10. SEPP 71 impacts	The site is falls within the Coastal Zone. The application is generally consistent with the Policy. Given the site has no direct frontage to any foreshore reserve, it would have minimal impact upon the Tweed River system or coast.
11. Long term effects, with 'nuisance' created by: <ul style="list-style-type: none"> - streetscape - traffic generation - parking - noise - 'slummy intrusion' - loss of amenity - residential area becoming industrial - lower property values - social concerns - less maintenance of homes - precedent strengthened to allow new intrusions - fear the future 'vision for tweed' will bypass area - deterrent to investors - stagnation of area in perpetuity 	<p>As described earlier, the building has functioned on the site for many years. The current proposal does not extend or unduly intensify that continuing operation on the site. No particular accumulative impacts are envisaged by this proposal.</p> <p>The mix of land use along the eastern side of Recreation Street has been established for many years. Advice from the Strategic Planning Unit indicates there will be no amendment to the zoning as a result of the current Amendment 21 to the Tweed LEP [although all the public submissions have not been fully appraised.] It is not anticipated that the character of the area will change significantly in the intermediate future.</p>

(e) Public interest

As the bulk store provides a service in maintaining community telecommunication assets – particularly in an emergency/crisis, the use of the existing warehouse building is considered to be appropriate. It provides convenient access to local residential suburbs – particularly in an urgent after

hours circumstance. It provides local employment and would not unduly impact upon the adjoining properties.

OPTIONS:

1. Approve the application subject to conditions.
2. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Having regard to the fact that the building has been used for similar purposes over the years, is not proposing any extension or modification, is flanked by a mix of commercial and service type land use, it is considered that it should not unreasonably impact upon the existing streetscape or local amenity. The facility would effectively allow the applicant to provide essential telecommunication installation and maintenance services within the local area. A similar "bulk store" was approved by Council recently at 44 Recreation Street and no change to the zoning is proposed under the current Amendment 21 of the Tweed LEP. Any commercial operation will generate some adverse impacts, but it should be noted that no other residents (apart from the current objector) have lodged any complaint either recently or in past years. On balance, the application is suitable for approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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- 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**

ORIGIN:

Development Assessment

FILE NO: PF1960/540 Pt2

SUMMARY OF REPORT:

An Section 96 amended application has been received seeking to delete condition 15 of the consent which prohibits the use of trailers with haul trucks along Duranbah Road. The condition was imposed due to the alignment and pavement width of Duranbah Road. The applicant contends that since the determination of the development application for the quarry Duranbah Road has been upgraded and is suitable to carry trucks with trailers.

RECOMMENDATION:

That Section 96 Application D95/0148.01 for amendment to Development Consent D95/0148 for continuation and expansion of the existing quarry (Quirk's) at Lot 12 DP 601427, Lot 1 DP 34555, and Lot 26 DP 615931, Eviron Road, Eviron be amended by deletion of condition number 15.

REPORT:

Applicant: Tweed Shire Council
Owner: Tweed Shire Council
Location: Lot 12 DP 601427, Lot 1 DP 34555 & Lot 26 DP 615931 Eviron Road, Eviron
Zoning: 5(a) Special Uses (Garbage Depot) and 1(b2) Agricultural Protection
Cost: Nil

BACKGROUND:

An deferred commencement consent was issued on 16 December 1999 for continuation and expansion of an existing quarry commonly known as Quirk's Quarry. The consent limits the amount of material to be removed to 577,000 tonnes with a maximum extraction rate of 100,000 tonnes for any 12 month period.

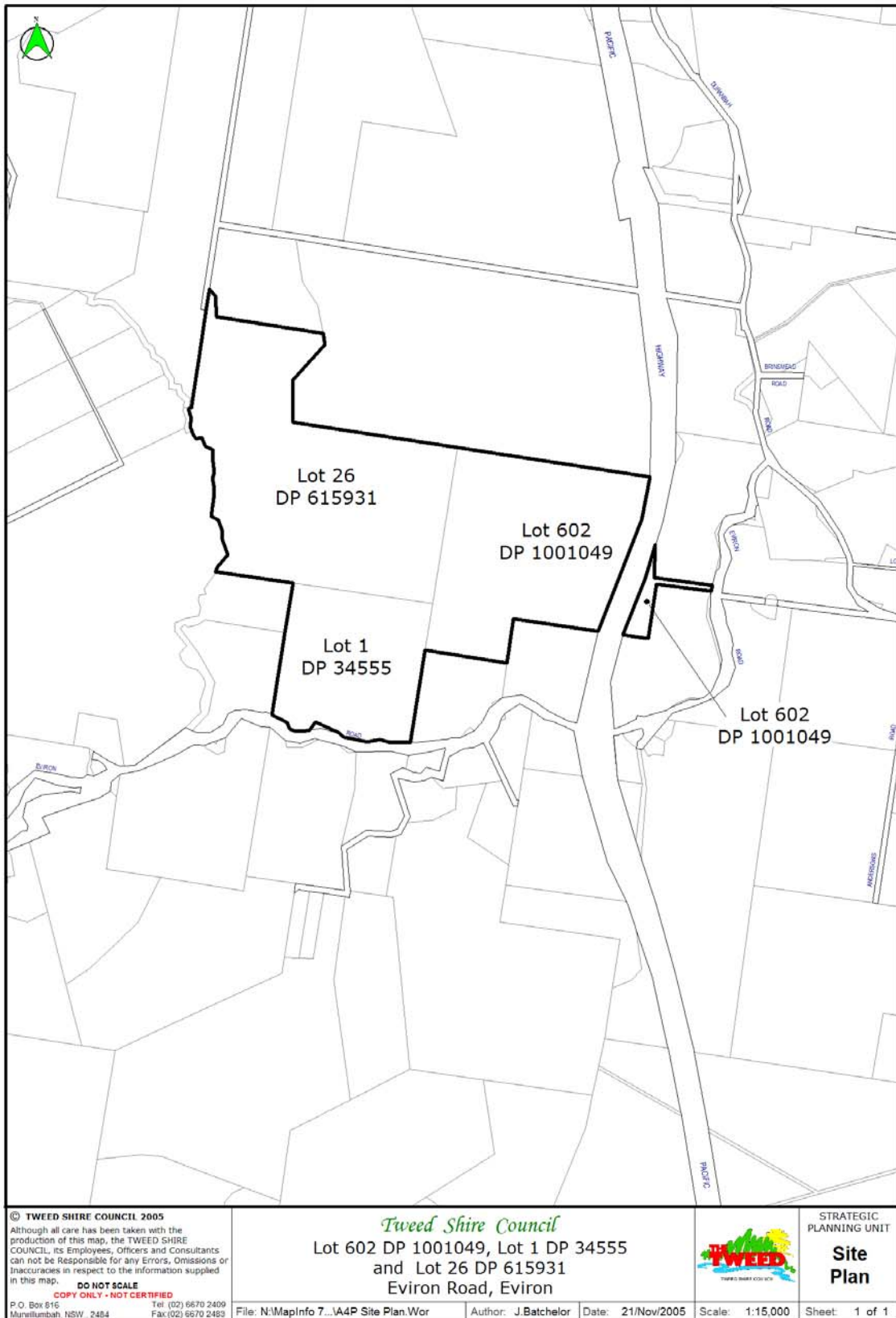
The Section 96 application seeks to delete condition 15 which reads-

"15. Due to the alignment and pavement width in Duranbah Road, the use of trailers with the haul trucks is prohibited along Duranbah Road."

The reasons put forward by the applicant for the request are as follows-

- Duranbah Road has received substantial upgrades since 1999;
- Other companies presently use the road with trucks and trailers to haul material;
- Stocks are depleting in Bartlett's Quarry and material will be required from Quirk's Quarry in the near future;
- To use another route is impractical, not cost-effective and would reduce competitive advantage.

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

(a) (i) The provisions of any environmental planning instrument

Tweed Local Environmental Plan 2000

The zoning of the land changed from 1(a) Rural and 1(b2) Agricultural Protection to 5(a) Garbage Depot and 1(b2) Agricultural Protection with the gazettal of Tweed LEP 2000. Consent was issued (16.12.99) prior to the gazettal of the Tweed LEP 2000 (7.4.00) for the extractive industry. Extractive industries are a permitted use in the 5(a) zone provided they are compatible with adjacent uses and are compatible with uses allowed in adjacent zones. Extractive industries are permitted in the 1(b2) zone subject to satisfying clause 8(2) of the Tweed LEP.

The proposed amendment does not affect the provisions of the LEP

North Coast Regional Environmental Plan 1988

The provisions of the REP are not affected by the proposed amendment.

State Environmental Planning Policies

SEPP-11 -Traffic Generating Developments. The chair of the Traffic Committee has provided comments regarding Duranbah Road. See section (b) below.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

N/A

(a) (iii) Development Control Plans (DCP's)

N/A

(a) (iv) Any Matters Prescribed by the Regulations

N/A

(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality

The impact of the proposal relates to the relationship between the trucks with trailers and residents, businesses and the school along Duranbah Road. Submissions were received from the public regarding the deletion of the

condition and the applicant has provided the following comments regarding the use of Duranbah Road for trucks with trailers: -

Submissions have been received from the local primary school principal, school students, the Department of Education, Tropical Fruit World, a hydroponics farm, the State Member for Tweed, the State Member for Tweed, Mr Neville Newell MP and three residents objecting to the use of trailers with haul trucks along Duranbah Road.

Objections relate mainly to: -

- safety - poor sight distances, condition of road, trucks going too fast, danger to children & tourists
- noise - particularly empty trucks returning and bouncing.

Response to submissions:

- Most of the submissions cited the need for safe access to and from the school as a reason for their objection to the use of trucks with trailers on Duranbah Road. Safe access to and from properties is generally the owner's responsibility. In particular, Duranbah Public School has a responsibility to provide safe access for those attending the school. They have been asked by the Traffic Committee to seal their driveway to avoid wheel spins in the gravel when parents leave the site, and to cut back the bank to improve sight distances, yet they have not taken action to date.
- Alternate routes from Quirks Quarry are impractical, less safe, circuitous, and would require more fuel. There is no direct access to the Pacific Highway anywhere near the quarry site. Haulage is undertaken by contractors whose contract says to use the shortest possible route. Duranbah Road would only be used when going east or south, and the use of trailers with trucks would cut down the total number of vehicle trips required along the road. The Quarry operates and hauls during daylight hours only and supplies material only for Council works with a public infrastructure benefit, i.e. there is no commercial advantage gained. See comment below from Council's Quarry Manager:

"The use of Duranbah Road is required because:

Council's haulage contracts are paid on a tonnes / km basis and the rule of thumb is for the haulage route to be the most direct route...that is to say that we pay extra by travelling un-needed extra kms.

To haul a large amount of gravel to a site using only rigid trucks is a costly exercise whereas using trucks and trailers is the cheaper alternative.

To haul gravel to the Tweed areas, Kingscliff and further south would require the trucks and dogs to travel west on Eviron Road, turn into Saunders Lane (dirt road) turn into Bartletts Lane (dirt road), turn into Leddays Creek Road and finally onto Tweed Valley Way and then to select the route needed at Chinderah or the by-pass. Most of the intersections do not support the safe turning of trucks and dogs. This whole process would be simpler and safer by travelling along Duranbah Road and turning into Cudgen Road or on to Tweed Valley Road where the intersections are more suitable.

The travel to the coastal areas by travelling along Eviron Road and then into Farrants Hill Road is not allowed because of load and length limits on the trucks. I believe that not even loaded rigid trucks are allowed to use this road to access other areas.

To take trucks and trailers west on Eviron Road to Clothiers Creek Road and then to turn east at Clothiers Creek Road and travel over the ridge is not allowed due to load limits.

Gravel to Murwillumbah areas will be by the Eviron Road- Clothiers Creek Road Tweed Valley Way route.

The amount of trucks and trailers along this route will vary depending on the various projects in the areas, that is to say I feel that trucks only would be the major traffic through that route with the occasional trucks and trailers as required.

The current situation on this road is trucks and trailers hauling sand from the sand plant on a regular basis and I feel that the rate payers of the Shire would be penalised financially by higher haulage costs on construction works if Council was forced to increase either the haulage distance with trucks and trailers or increase the number of truck movements in order to perform works.

As further information, in the report to Council by the Director of Development Services (File no. PF1960/540 Pt2) Dated Wednesday 4 August 1999, pages 65, 66 and 67 give argument for the use of truck and trailers so as to reduce the number of movements on this road and additional information of the previous route used by Quirk before purchase by Council. The reasoning for the prohibition of truck and trailers was the alignment and pavement width of the road ONLY. This has been somewhat addressed since then."

- *Duranbah Road has received several road upgrades in recent years, including widening in parts.*
- *Speeding and compliance with the school zone is a police issue and not really relevant to the discussion at hand, although Council has undertaken traffic counts and speed checks on Duranbah Road and the*

matter has been referred by the Traffic Committee to the Police for their action.

- *Noise is to be expected with proximity to a road.*

Council's Traffic Engineer has provided the following comments-

To date no crashes have been recorded on Duranbah Road that relate to trucks or trucks with trailers.

The 85th percentile speed for all trucks is 83kph whilst the posted speed limit is 80kph.

Enforcement of the 40kph zone is a police matter.

An approval exists to remove a defined amount of material from the quarry per annum and this does not change with the proposed Section 96 variation.

This means that Duranbah Road will carry the volume of trucks required to remove the annual yearly quota of product regardless of whether this modification is approved or not. This means the 'noise' is already there, the 'trucks' are already there but the proposal to allow dog trailers actually reduces truck movements.

Duranbah School has a substandard access driveway which is the Department of Education's responsibility and Council has written to the State Member for Tweed, Mr Neville Newell requesting his assistance in getting the Department of Education to upgrade the driveway immediately. The Local Traffic Committee has also raised concerns over the school's driveway and police enforcement.

Some confusion appears to exist over the impact of this proposal.

The Quarry is already approved to remove 100,000 tonnes per annum. It could all be moved along Duranbah Road. If existing 10m³ trucks are used then 4,200 truck loads of material can use Duranbah Road per year under the current approval.

This proposal would reduce the number of trucks on Duranbah Road by up to 50% if they all used a trailer. Generally, this is a benefit as there will be less noise and less potential conflict at the school driveway. The only issue is road width. Duranbah Road has been extensively widened and Council has already deemed it appropriate for trucks and trailers hauling from the Sand Quarry on Duranbah Road.

The only issue to be addressed is the inappropriate school driveway and the reluctance of the property owner (Department of Education) to take responsibility for its assets and construct a driveway that complies with Council's and Austroad's standards.

(c) Suitability of the site for the development

The site is not altered by the amendment.

(d) Any submissions made in accordance with the Act or Regulations

The Department of Primary Industries have raised no objections to the amendment.

The NSW Roads and Traffic Authority have raised no objection to the amendment but have stated that Council should be satisfied that the increase in heavy vehicle length does not adversely impact on the safe operation of Duranbah Road. See previous comments regarding Duranbah Road.

Eight submissions have been received regarding the amendment. The submissions object to the proposed amendment. The objections primarily relate to safety issues regarding Duranbah Road. The speed of the trucks and the road conditions of Duranbah Road are the main issues raised.

The State Member for Tweed, Mr Neville Newell, the Department of Education and Duranbah School, parents and pupils has raised issues regarding safety in the vicinity of the School. Council has written to the Department of education regarding the School's access a copy is provided in the attachments.

(e) Public interest

The public interest is served if Council's works program is undertaken efficiently. It is also in the public interest that the road network is safe for users. Works in Duranbah road have improved road conditions and Council's Traffic Engineer is satisfied that the road is suitable for the truck and trailer movements.

OPTIONS:

1. Approve the amendment.
2. Refuse the amendment.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Continued prohibition on the use of trailers will affect the efficiency of the delivery of resources to the eastern parts of the Shire. See above comments regarding haul routes.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Improvements to Duranbah Road have been undertaken that render the prohibition of haul trucks with trailers redundant. The number of trucks using Duranbah Road could be reduced if the trucks use trailers for haulage.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- [1. Letter to Department of Education regarding access \(DW 1266677\)](#)
 - [2. Response to the State Member for Tweed, Mr Neville Newell MP regarding Duranbah School \(DW 1243529\)](#)
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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

ORIGIN:

Development Assessment

FILE NO: DA05/0701 Pt1

SUMMARY OF REPORT:

The Development Assessment Panel at a meeting on 26 August 2005, refused a Development Application for greyhound kennels.

Council is in receipt of a S.82A Review of Determination, although an Appeal has already been lodged with the Land & Environment Court.

No additional information has been lodged to cause a different recommendation. The local complaint and concern about noise from barking dogs remains constant with disturbances being diarised and documented. If an independent report from an acoustic expert had been submitted to demonstrate minimal emissions and /or how noise was satisfactorily addressed, then a full assessment might produce a different recommendation. In the absence of any additional or more accurate information however, it is recommended the original decision to refuse the proposal be upheld. The case law and precedents provided do not tend to be related to equivalent proposals or sites and should not be given determining weight.

RECOMMENDATION:

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.

REPORT:

Applicant: Mrs LL Green
Owner: Mr A Sinclair and Mrs LL Green
Location: Lot 3 DP 701833, No. 3808 Kyogle Road, Mount Burrell
Zoning: 1(a) Rural
Cost: \$1000

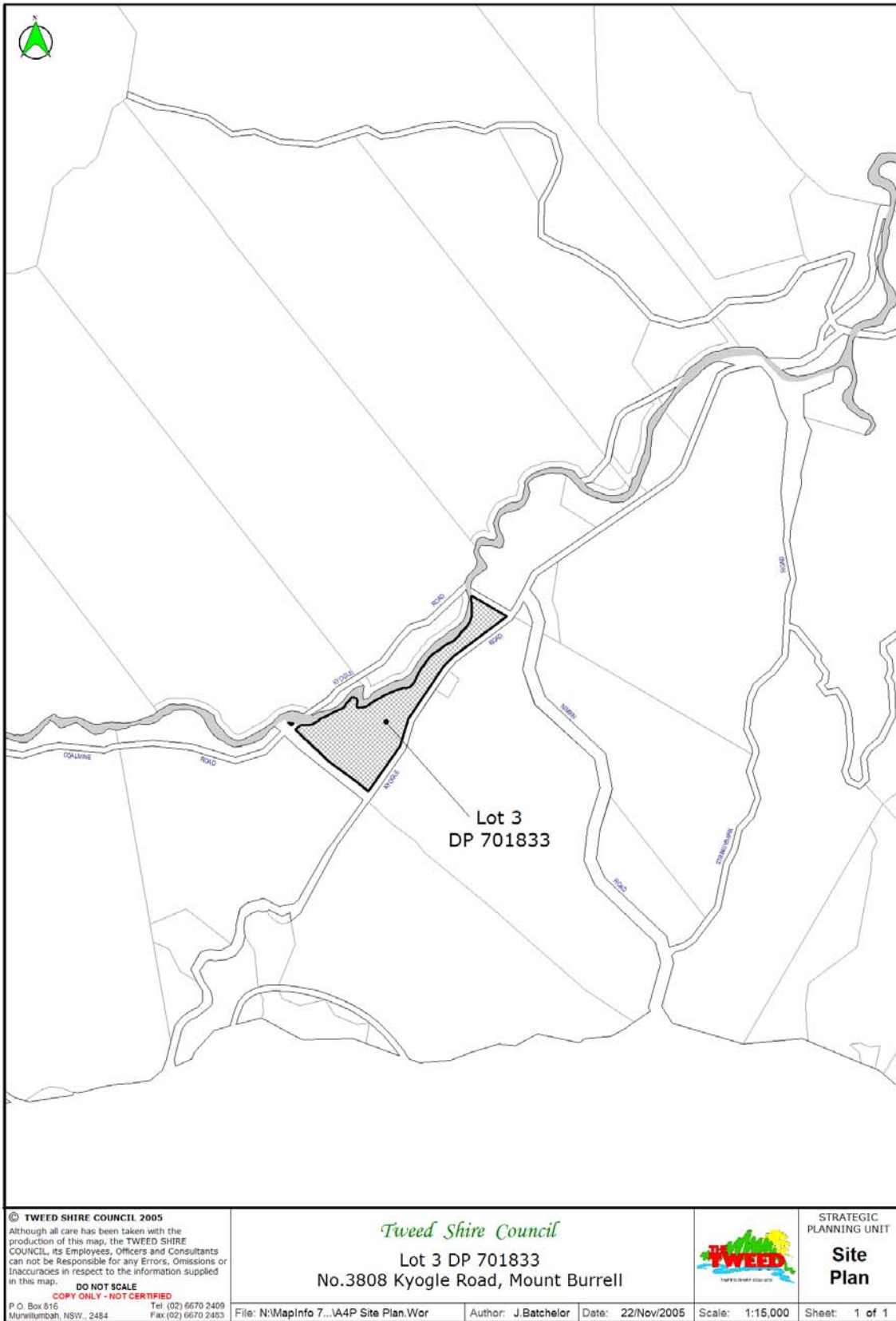
BACKGROUND:

- Council first received complaints concerning noise emissions in December 2004. As a consequence, Council officers inspected the premises on 12 January 2005. Although advised by the owners that there were 20 dogs on site, 30 were counted and appeared to be housed in less than sanitary or suitable accommodation.
- The owners were advised to remove all but two dogs which were allowed as domestic pets, **OR** seek Development Consent for the unauthorised land use. They were advised at the time that it was unlikely that any application would be approved given the existing level of complaint concerning environmental disruption from barking.
- A Development Application was lodged on 17 June 2005 and advertised for public comment. Five objections and a petition with 24 signatories were received. The Development Assessment Panel (DAP) refused the application on 26 August 2005 for the following reasons:
 - "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."*
- The applicant then lodged an appeal with the Land & Environment Court on 16 September 2005.
 - In addition to lodging the Appeal, the applicant has now sought a Review of Determination under S82A which is the subject of this report. The Appeal is adjourned pending the outcome of Council's review decision.

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 82A OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

- The proposal is exactly the same as that previously considered, although it is supplemented by some additional information. This includes a brief rebuttal of each of the eight grounds of refusal which relies upon some case law and two precedents of earlier Council decisions.

Ground of refusal	Applicants rebuttal	Response
“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.”	“Building is totally screened. No change to existing land use and conservation.”	Visual screening is almost irrelevant. It’s the environmental impact from noise emissions which continue to be a critical factor. The rural amenity would not be protected.
“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.”	“The local community is not aware of the use or activities. It is visually isolated. Immediate neighbours support the proposal.”	The local community is fully aware and extremely concerned – 5 letters and one petition with 24 signatories was received. This is significant given the residential density in this rural area. The closest three neighbours all object – the only near neighbour who does not oppose it does not live on site.
“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.”	Application satisfies requirements for Clothiers Creek and Smiths Creek Rd DA’s (precedents) and case law from Ballina and Hornsby cases.	Clothiers Creek Rd DA was recommended for refusal by officers but approved by Council. There was a history of complaint from neighbouring residents who successfully took private legal action against the operator under the Protection of the Environment Operations Act 1997. A Noise Abatement Order was issued and two subsequent convictions

		<p>for breaches of that Order followed.</p> <p>Smiths Creek Rd DA raised concerns from neighbours at the time and ongoing complaints after Council's decision. That operator has now sold up (with ongoing compliance matters possibly being a contributing factor.)</p> <p>The Ballina case only involved the keeping of 6 dogs – not 30 greyhounds.</p> <p>The Hornsby case relied upon an Acoustic report from an acoustic expert. The current application has no expert assessment of noise impact.</p> <p>None of these cases address the issue of "community health". The inspection on 12 January 2005 revealed the dogs were kept in less than sanitary conditions.</p>
<p>"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."</p>	<p>"Applicant has sought legal advice and is aware of need for some additional information. This is provided.</p> <p>More information provided than the Clothiers Creek Rd."</p>	<p>No expert evidence has been submitted regarding the key issues of noise or effluent disposal. Impacts cannot be properly assessed. This is vital given level of local complaint.</p>
<p>"The proposed development fails to satisfy Section 79C(1)(b) of the Environmental</p>	<p>"No evidence to support this assumption. Adequate information has been provided.</p>	<p>Noise is the main concern for locals. No 'Acoustic Report' has been lodged even though the</p>

<p>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.”</p>	<p>Additional information sought for Clothiers Creek Rd.”</p>	<p>applicants were advised from the outset that noise emissions was the principal issue.</p> <p>A Diary of observed disturbances has been documented by the immediate neighbours.</p>
<p>“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.”</p>	<p>“No evidence to support this contention. 27 acres is more than adequate. It is screened and more distance from neighbours than case law.”</p>	<p>In view of the petition expressing local concern; minimal works (\$1000 cost) to minimise impacts; lack of independent assessment by experts (noise emissions) and observed low standard of on-site management, its considered to be unsuitable for this particular site.</p>
<p>“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.”</p>	<p>“This statement is illogical value laden and biased.”</p>	<p>The ‘principal of caution’ is required when there is a record of public complaint. It is not in the public interest to grant approval to a land use when clear local complaint exists and it cannot be fully assessed due to insufficient or vague information.</p>

<p>“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.”</p>	<p>“There are no public submissions concerning the development. Any submission must relate to a personal conflict with a neighbour who does not reside there now.”</p>	<p>There are public submissions. The original application drew 5 letters and a petition with 14 signatories.</p> <p>The S.82A application has attracted two letters and submission of the original petition again.</p> <p>One of the nearest neighbours has submitted a Doctors Report stating that his health has been severely affected – chronic sleep disturbance and marked stress (over last 14 months since dogs introduced).</p>
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- In summary, the case law and Council precedent are considered to be either spurious or irrelevant, as they quote cases which are not necessarily parallel to the current proposal. Each case needs to be assessed on its own merit.
- Any additional information still does not address the two core environmental issues which should be given determining weight : noise and effluent.

Instead of a necessary ‘Acoustic Report’ prepared by a consultant to measure sound emissions and noise impact, the applicant’s **new statement** is *“Noise is minimal. When completed, the kennel block will be fully insulated to lock up stage with radio/music playing softly. Partially covered and all areas will be separated from each other by fences and sight barriers. There is always someone on hand and barking is attended to immediately.”*

- Instead of an ‘On-site Sewage Management Plan’ to demonstrate how effluent and waste are appropriately dealt with, the applicant has made a **new statement** that *“A large worm farm to recycle faeces into soil is to be installed. The physical product is to be harvested for lawns and garden use. A septic tank approved for this purpose.”*
- Apart from any merit assessment, it is considered that the previous application was properly assessed and processed, and fully considered all matters pursuant to the requirements of Section 79C of the Environmental Planning and Assessment Act 1979.

Public Notification

Following public notification between 9 to 23 November 2005, eight letters were received, with one letter attaching the original letters of complaint and petition with 24 signatories.

At the time of writing this report, there was one day remaining of the Notification Period. As this matter is also before the Land and Environment Court, it is important that a decision is made as soon as possible on this application. Should any additional submissions be received between the closing of this agenda and the Council meeting, they will be tabled at the meeting.

It is significant to note that the applicant relies upon the signature of three neighbours who are purported to support their application. However, one of those neighbours later signed the original petition against the proposal and has now lodged a letter against the proposal. The second signatory has also now written a letter withdrawing his earlier support. The third neighbour does not actually reside at that address but apparently resides in Murwillumbah.

The same concerns were raised by the objectors as for the original report. One of the nearest neighbours has submitted a Doctors Report stating that his health has been severely affected – chronic sleep disturbance and marked stress (over last 14 months since dogs introduced). A diary of observed disturbances has been documented by the immediate neighbours.

Eight of the nine closest neighbours oppose the dog kennels. As described above, this neighbour resides elsewhere and is normally absent.

OPTIONS:

1. Uphold the decision to refuse the application based on the eight reasons for refusal previously provided.
2. Uphold the decision to refuse the application but modify certain reasons for refusal.
3. Support the proposal and request appropriate conditions for approval be submitted to the next Council meeting.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the decision for the Review of Determination, the applicant has already lodged an appeal which can be determined by the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

No substantive additional information has been lodged to cause a different recommendation. The local complaints and concerns about barking remains constant with disturbances being diarised and documented. If an independent report from an acoustic expert had been submitted to demonstrate noise was not a critical issue, then a

full assessment might produce a different recommendation. In the absence of any additional or more accurate information however, it is recommended the original decision to refuse the proposal be upheld. The case law and precedents provided do not tend to be relevant to this proposal and should not be given determining weight.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- [1. *Development Assessment Panel report dated 26 August 2005 \(DW 1256705\)*](#)
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4 [PD] Tweed Heads Master Plan - Section 94

ORIGIN:

Strategic Town Planning

FILE NO: GT1/S94/26; GT1/S94/27

SUMMARY OF REPORT:

At its Ordinary meeting of 19 October 2005, Council resolved to amend and exhibit the following:

- An amendment to Section 94 Contribution Plan No 26 – Shire Wide/Regional Open Space (CP26) to include funding for the Tweed Heads Master Plan work around Jack Evans Boat Harbour; and
- A new Section 94 Contribution Plan No 27 – Tweed Heads Master Plan – Streetscaping and Local Open Space (CP27) to accommodate funding of the local open space and streetscaping for the Tweed Heads Master Plan.

The above Plans were exhibited between 26 October 2005 and 22 November 2005. There were no responses to the exhibited Plans.

RECOMMENDATION:

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.**

REPORT:

At its Ordinary meeting of 19 October 2005, Council resolved to amend and exhibit the following:

- An amendment to Section 94 Contribution Plan No 26 – Shire Wide/Regional Open Space (CP26) to include funding for the Tweed Heads Master Plan work around Jack Evans Boat Harbour; and
- A new Section 94 Contribution Plan No 27 – Tweed Heads Master Plan – Streetscaping and Local Open Space (CP27) to accommodate funding of the local open space and streetscaping for the Tweed Heads Master Plan.

The above Plans were exhibited between 26 October 2005 and 22 November 2005. There were no responses to the exhibited Plans.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

5 [PD] New Arrangements for Development Control Plans

ORIGIN:

Strategic Town Planning

SUMMARY OF REPORT:

Reforms to the EP&A Act involves the reduction in the number of Development Control Plans (DCPs) with the intention of making it easier for planning authorities, business and the community to determine the controls that apply to a particular site. These reforms commenced on 30 September 2005 and apply to any new or amended DCPs after that date.

As a result of these reforms only one DCP can apply to the same land. This report therefore proposes the amalgamation of all Council's DCPs into one consolidated DCP. A draft amalgamated DCP is at Attachment A. The two sample sections are incomplete but indicate one approach. It is proposed that these sections represent all the current DCPs. While this DCP is a re-arrangement of current DCPs it will require public exhibition as it proposes a new DCP. The process of adapting the current DCPs to the style of the proposed amalgamated DCP will take some time, however it is hoped to advertise the new DCP early in the new year.

RECOMMENDATION:

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.**

REPORT:

Reforms to the EP&A Act involves the reduction in the number of development control plans (DCPs) with the intention of making it easier for planning authorities, business and the community to determine the controls that apply to a particular site. These reforms commenced on 30 September 2005 and apply to any new or amended DCPs after that date.

As a result of these reforms only one DCP can apply to the same land. All existing DCPs continue to apply to the land to which they applied before the above changes to the EP&A Act. The requirement that only one DCP applies to the land does not activate until Council makes a new DCP for land covered by an existing DCP. For example if Council amends DCP 9 - West Kingscliff then this DCP and all the other DCPs that also apply to that land (for eg, multi dwelling housing) will be rendered invalid by virtue of the fact that there is more than one DCP applying to the land in that area. A new single DCP consolidating all possible DCPs that apply to that land would need to be made.

Council has a number of DCPs that apply to the same land. In all Council has approximately 34 DCPs and they are both site specific (for eg. DCP 3 – Banora Point/South Tweed Heads) and Shire wide (for eg. DCP 6 - multi-dwelling housing).

There are two options available to Council to comply with the legislative changes:

1. Amalgamate all current DCPs into one new or amending DCP. This amalgamation will apply to both site specific DCPs and DCPs that apply to the whole of the shire.
2. Amend all its site-specific DCPs so they adopt the relevant provisions of the Shirewide DCPs and, at the same time, exclude the land to which those site-specific DCPs apply from the operation of the Shirewide DCP.

It is proposed that Council follow Option 1 and amalgamate all of its DCPs into one DCP.

A draft amalgamated DCP is at Attachment A. The two sample sections are incomplete but indicate one approach. It is proposed that these sections represent all the current DCPs. While this DCP is a re-arrangement of current DCPs it will require public exhibition as it proposes a new DCP. The process of adapting the current DCPs to the style of the proposed amalgamated DCP will take some time, however it is hoped to advertise the new DCP early in the new year.

A number of draft DCP amendments are either anticipated (eg. DCP5 and DCP16) or have been endorsed by Council for exhibition. These will be incorporated into the consolidated DCP.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

[1. *Draft Tweed Shire Development Control Plan \(DW 1299419\)*](#)

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