

**TITLE: [PD-PC] Development Application DA06/0266 for a Mortuary - Crematorium and LEP Amendment at Lot 703, 704, 705, 707 DP 1000580, No. 9394 Tweed Valley Way, Chinderah**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA06/0266 Pt1**

**SUMMARY OF REPORT:**

An application made under s 72J of the *Environmental Planning and Assessment Act 1979* for a crematorium, ancillary uses, and draft Local Environmental Plan has been received and is the subject of this report.

The application is for a crematorium and associated uses. The application is accompanied with a request for a change to LEP Schedule 3 to facilitate the crematorium, which is otherwise prohibited.

Council at its meeting of 12 April 2006 resolved as follows: -

- "1. *The applicant's attention be drawn to the Minister's directions 14 and 7 made 30 September 2005 s54(4) notification advice and checklist.*
2. *The applicant must satisfy Council that these directions and checklist have been complied with in a manner satisfactory to Council.*
3. *The Director Planning and Development should report to Council when these requirements have been satisfied."*

The applicant has made a submission which complies with Council's resolution. Council should restrict the amendment of Schedule 3 in the Tweed LEP to only apply to that portion of land which contains the Melaleuca Station building and curtilage. The proposed amendment would not apply to land with frontage to the Pacific Highway nor to any land which is being used for agricultural purposes.

**RECOMMENDATION:**

**That: -**

1. **Council informs the Director-General of the Department of Planning that pursuant to Section 54(1) of the Environmental Planning and Assessment Act, 1979 Council intends to prepare a draft Local Environmental Plan to amend Schedule 3 of Tweed Local Environmental Plan 2000 to enable a mortuary/crematorium to be established on the eastern portion of Lot 704 DP 1000580 between the Tweed Valley Way and the old unmade road reserve adjacent to the Pacific Highway.**

- 2. Council advises the Director-General that it does not consider a Local Environmental Study is needed.**

**REPORT:**

**Applicant:** BCS Group Pty Limited  
**Owner:** BCS Group Pty Limited  
**Location:** Lot 703, 704, 705 & 707 DP 1000580, No. 9394 Tweed Valley Way, Chinderah  
**Zoning:** 1(b2) Agricultural Protection  
**Cost:** \$280,000

The Section 117 Ministerial Directions numbered 7 and 14 and the Proforma for the LEP Review Panel are reproduced below for information.

## SECTION 117 MINISTERIAL DIRECTIONS

### **Direction No.7 – Commercial and Retail Development along the Pacific Highway, North Coast**

#### **Objective**

The objectives for managing commercial and retail development along the Pacific Highway are:

- To protect the Pacific Highway's function, that is to operate as the North Coast's primary inter- and intra-regional road traffic route;
- To prevent inappropriate development fronting the highway
- To protect public expenditure invested in the Pacific Highway,
- To protect and improve highway safety and highway efficiency,
- To provide for the food, vehicle service and rest needs of travellers on the highway, and
- To reinforce the role of retail and commercial development in town centres, where they can best serve the populations of the towns.

#### **Where this direction applies**

This direction applies to those councils on the North Coast that the Pacific Highway traverses, being those councils between Port Stephens Shire Council and Tweed Shire Council, inclusive.

#### **When this direction applies**

This direction applies when a council prepares a draft LEP for land in the vicinity of the existing and/or proposed alignment of the Pacific Highway.

#### **What a council must do if this direction applies**

- (1) A draft LEP that applies to land located on "within town" segments of the Pacific Highway shall provide that:
  - (a) new commercial or retail development shall be concentrated within distinct centres rather than spread along the highway,
  - (b) development with frontage to the Pacific Highway shall consider impact the development has on the safety and efficiency of the highway.
  - (c) For the purposes of this paragraph, "within town" means areas which, prior to the draft local environmental plan, have an urban zone (eg: "village", "residential", "tourist", "commercial", "industrial", etc) and where the Pacific Highway speed limit is less than 80km/hour.
- (2) A draft LEP that applies to land located on "out-of-town" segments of the Pacific Highway shall provide that:
  - (a) new commercial or retail development shall not be established near the Pacific Highway if this proximity would be inconsistent with the objectives of this Direction.
  - (b) development with frontage to the Pacific Highway shall consider impact the development has on the safety and efficiency of the highway.
  - (c) For the purposes of this paragraph, "out-of-town" means areas which, prior to the draft local environmental plan, do not have an urban zone (eg: "village", "residential", "tourist", "commercial", "industrial", etc) or are in areas where the Pacific Highway speed limit is 80km/hour or greater.

## SECTION 117 MINISTERIAL DIRECTIONS

- (3) A draft LEP shall permit the establishment of a highway service centre beside the Pacific Highway, provided that:
- (a) They are located as near as possible to an existing town that has been by-passed,
  - (b) the town's economy is considered before approval is given to establish any new or expanded highway service centre on the edge or outside the town, and
  - (c) it is spaced no closer than 24 kilometres from another highway service centre or a town through which the highway still passes, and
  - (d) it is limited to one highway service centre to serve both directions of traffic, or one highway service centre per side of the highway,
  - (e) the only uses allowed in highway service centres are:
    - (i) service stations (which may supply convenience goods catering for the needs of the travelling public),
    - (ii) emergency vehicle repairs,
    - (iii) bus/coach terminal facilities (but not depots),
    - (iv) restaurant facilities (preferably both sit-down and fast food),
    - (v) toilet/shower facilities,
    - (vi) tourist information (but not commercial tourist facilities),
    - (vii) telephones,
    - (viii) rest areas (including seating, barbecue and play areas), and
    - (ix) adequate parking for cars, buses and trucks.
  - (f) For the purposes of this paragraph, a highway service centre is a place which provides only services essential to long distance travellers on the highway

## **Direction No.14 – Farmland of State and Regional Significance on the NSW Far North Coast**

### **Objective**

- To ensure that the best agricultural land will be available for current and future generations to grow food and fibre,
- To provide more certainty on the status of the best agricultural land, thereby assisting councils with their local strategic settlement planning,
- To reduce land use conflict arising between agricultural use and non-agricultural use of farmland as caused by urban encroachment into farming areas.

### **Where this direction applies**

This direction applies to Ballina Shire Council, Byron Shire Council, Kyogle Shire Council, Lismore City Council, Richmond Valley Council and Tweed Shire Council.

### **When this direction applies**

This Direction will apply when a council prepares a draft local environmental plan for land mapped as:

- State significant farmland, or
- regionally significant farmland, or
- significant non-contiguous farmland

as identified on the set of four maps held in the Department of Planning and marked "Northern Rivers Farmland Protection Project, Final Map 2005 (Section 117(2) Direction)".

### **What a council must do if this direction applies**

- (1) A draft local environmental plan shall not rezone land identified as "State Significant Farmland" for urban or rural residential purposes.
- (2) A draft local environmental plan shall not rezone land identified as "Regionally Significant Farmland" for urban or rural residential purposes.
- (3) A draft LEP shall not rezone land identified as "significant non-contiguous farmland" for urban or rural residential purposes.
- (4) A draft LEP may be inconsistent with this direction only if council can satisfy the Director-General that:
  - (a) any particular provision or area should be varied or excluded having regard to the provisions of section 5 of the Environmental Planning and Assessment Act, and
  - (b) the draft LEP is consistent with Section 4 of the report titled "Northern Rivers Farmland Protection Project - Final Recommendations, February 2005", as lodged in the Department of Planning.

The applicant has made the following submission in relation to these Directions: -



**Jim Glazebrook & Associates Pty Ltd**  
Town Planners & Development Consultants

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21 April 2006

The General Manager  
Tweed Shire Council  
PO Box 816  
MURWILLUMBAH 2484

Property No: 41932

TWEED SHIRE COUNCIL	
FILE No	DA06/0266 1
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Attention: Noel Hodges

Dear Sir,

Lot 703, 704 + 705 DP1000580  
+ 707

No 9394

Re: DA 06/0266 & Proposed LEP Amendment for a Mortuary Crematorium at Tweed Valley Way, Chinderah

Further to the above matter, we understand that Council at its meeting of <sup>2</sup> April 2006, resolved that:

- 1 The applicant's attention be drawn to the Minister's directions 14 and 7 made 30 September 2005 s54(4) notification advice and checklist
- 2 The applicant must satisfy Council that these directions and checklist have been complied with in a manner satisfactory to Council
- 3 The Director Planning and Development should report to Council when these requirements have been satisfied "

With respect to the information required by that resolution, we advise as follows:

▪ **Section 117 Direction No.7**

This Direction relates to commercial and retail development along the Pacific Highway, North Coast.

The proposed development is to be located within the curtilage of a long established rural tourist facility known as "Melaleuca Station". Within the context of existing site improvements and activities, the proposed development would be visually insignificant. While the site has frontage to the Pacific Highway (Yelgun/Chinderah Motorway), it is oriented to, and obtains access from, the Tweed Valley Way. The Pacific Highway frontage is of no consequence in respect of either generating business for the proposal or providing other logistical support. The proposed use is intrinsically suited to a rural site of this nature, and is not of

an order of services which should be provided within the retail/commercial core of a town centre

We note that the objectives of Direction No 7 are

- *To protect the Pacific Highway's function, that is to operate as the North Coast's primary inter-regional road traffic route,*
- *To prevent inappropriate development fronting the Highway,*
- *To protect public expenditure invested in the Pacific Highway,*
- *To protect and improve highway vehicle safety and highway efficiency,*
- *To provide for the food, vehicle services and rest needs of travellers on the highway, and*
- *To reinforce the role of retail and commercial development in town centres, where they can best serve the populations of the towns*

With respect to those objectives, we can comment as follows:

- The proposed development would not prejudice the function of the Pacific Highway.
- The proposed development does not have any significant relationship with the Pacific Highway. It does not access the Highway or otherwise depend on the Highway for generating business. Moreover, within the context of the existing development, it would have no consequential visual impact.
- No issues are raised with respect to public expenditure investment in the Pacific Highway.
- The proposed development would not have any adverse impacts with respect to Highway safety and efficiency.
- The proposed development would not prejudice the need to provide for highway service centres.
- Because of the nature of the development, it is not of an order of services that should be provided within the commercial/retail core of the town centre.

Having regard to the foregoing, it is concluded that the proposal is compliant with the objectives of Direction No. 7.

Direction No. 7 specifically provides that in respect of "out-of-town" segments of the Pacific Highway, a draft LEP shall provide that,

- a. *New commercial or retail development shall not be established near the Pacific Highway if this proximity would be inconsistent with the objectives of this Direction*



2.

- b) *Development with frontage to the Pacific Highway shall consider impact the development has on the safety and efficiency of the highway*
- c) *For the purposes of this paragraph, "out-of-town" means areas which, prior to the draft local environmental plan, do not have an urban zone (eg "village", "residential", "tourist", "commercial", "industrial" etc) or are in areas where the Pacific Highway speed limit is 80km/hour or greater*

The draft LEP is consistent with the foregoing matters (a) and (b) and is therefore compliant with Section 117 Direction No. 7.

▪ **Section 117 Direction No. 14**

This Direction relates to Farmland of State and Regional Significance on the NSW Far North Coast.

Council advises that the subject land is classified as "Regionally Significant Farmland" for purposes of this Direction. With respect to that classification of farmland Direction No. 14 provides that,

*"(2) A draft local environmental plan shall not rezone land identified as "Regional Significant Farmland for urban or rural residential purposes."*

In this case, the draft LEP does not propose to rezone the land to which it applies. The zoning of Agricultural Protection 1(b2) is to be retained. The primary purpose of the draft LEP is to address a question of uncertainty as to whether the applicant's proposal is permitted within the zone. This would consequently facilitate consideration of the development application according to its merits. In this respect the draft LEP is consistent with Direction No. 14.

It is noted that the objectives of the Direction No.14 are,

- *To ensure that the best agricultural land will be available for current and future generations to grow food and fibre,*
- *To provide more certainty on the status of the best agricultural land, thereby assisting councils with their local strategic settlement planning,*
- *To reduce land use conflict arising between agricultural use and non-agricultural use of farmland as caused by urban encroachment into farming areas*

With respect to those objectives, it is important to be mindful of the fact that the proposal would be established and operated within the curtilage of the "Melaleuca Station" tourist facility which was approved on this site 14 years ago in 1992. The proposal would not therefore alienate any currently productive agricultural land nor create any potential land use conflicts.

We submit that the proposal is consistent with both the objectives and specific provisions of Section 117 Direction No.14.



3.

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Jim Glazebrook & Associates Pty Ltd  
Town Planners & Development Consultants



▪ **LEP Pro-Forma Evaluation Criteria**

With respect to the LEP pro-forma evaluation criteria it is commented as follows.

*Will the LEP be compatible with agreed State and regional strategic direction for development in the area (eg land release, strategic corridors, development within 800m of a transit node)?*

Yes. The draft LEP does not propose to rezone land. Its purpose is to address a question of uncertainty as to the permissibility of a development proposal so as to facilitate consideration of a development application according to its merits. It does not create any issues of strategic significance in a State or regional context.

*Will the LEP implement studies and strategic work consistent with State and regional policies and Ministerial (s 117) directions?*

The draft LEP is consistent with relevant Section 117 Directions (refer discussion above) and State/regional policies (refer S.E.E.)

*Is the LEP in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub-regional strategy?*

No

*Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?*

The draft LEP will facilitate the generation of permanent employment (refer S.E.E.). It is expected that this facility will result in a net increase in employment over and above the current situation of about two (2) to three (3) jobs

*Will the LEP be compatible/complementary with surrounding land uses?*

The draft LEP does not propose to rezone land. The question of compatibility of the proposed use with surrounding land uses has been addressed in the context of Section 79C of the EP & A Act in the Statement of Environmental Effects. It is submitted that the proposal is compatible with surrounding land uses.

*Is the LEP likely to create a precedent, or create or change the expectations of the landowner or other landholders?*

Taking into account the site context of the proposed development, the primary purpose of the draft LEP and relevant merit considerations (EP & A Act Section 79C) the draft LEP is not likely to create a precedent or affect the expectations of the landowner or other landholders.

*Will the LEP deal with a deferred matter in an existing LEP?*

No

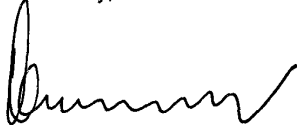


*Having the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these*

There are no other known spot rezoning proposals in the locality.

I trust this now satisfies your requirements and that the application can now proceed to statutory processing, assessment and determination.

Yours faithfully,



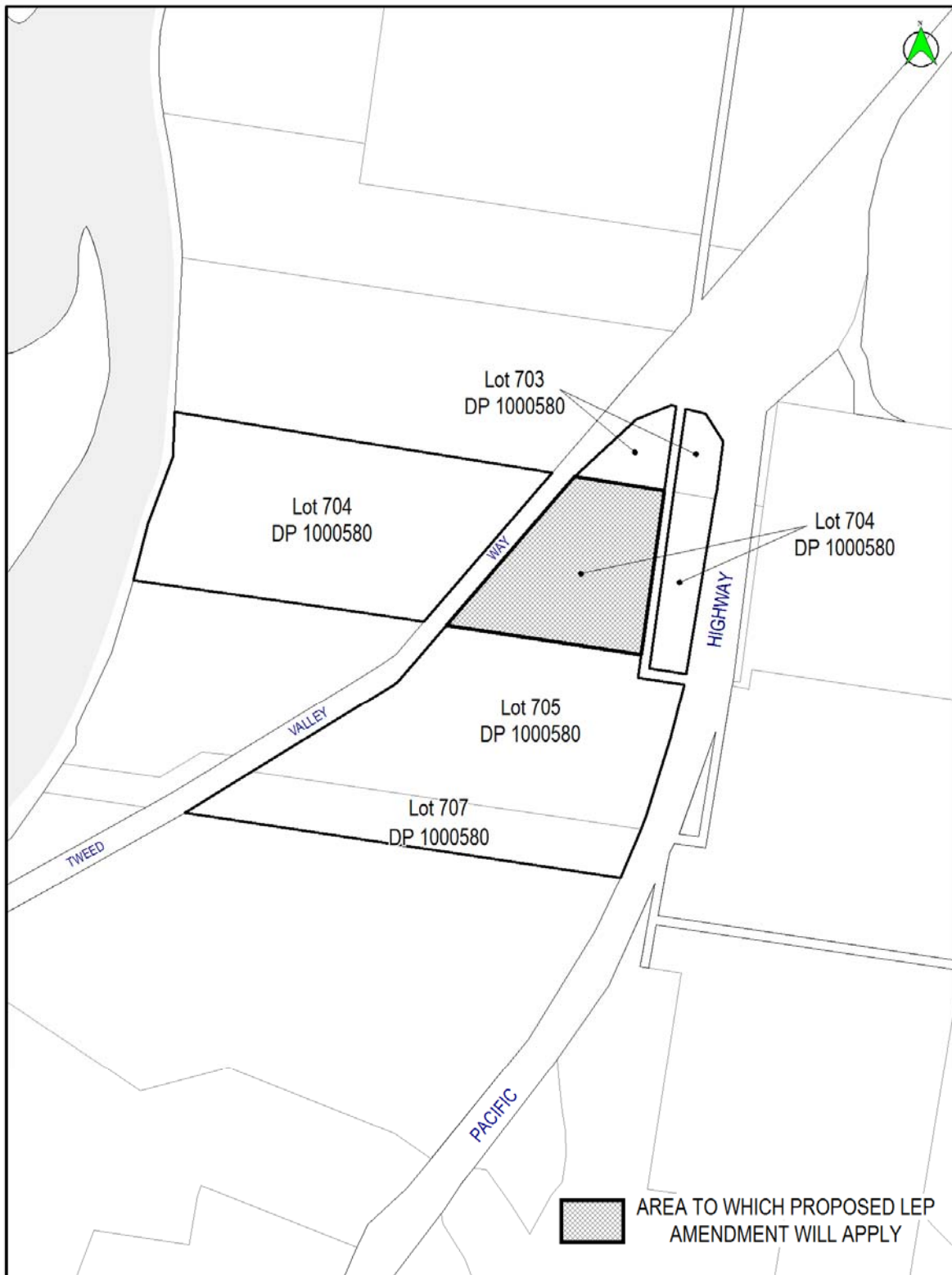
**Jim Glazebrook**  
**Director**


Beck-TSC 20 4 06



It is considered that the proposed change in Schedule 3 of Tweed Local Environmental Plan 2000 to include a mortuary/crematorium should only apply to the Melaleuca Station building and its curtilage. The Department of Planning will assess the application and the submission from the applicant in relation to the proposed amendment. The development application for the mortuary/crematorium will have to be considered on its merits having regard to any submissions received.

**SITE DIAGRAM:**

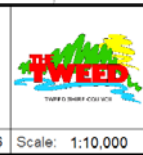


 AREA TO WHICH PROPOSED LEP AMENDMENT WILL APPLY

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 Murwillumbah, NSW. 2484      Fax: (02) 6670 2483

*Tweed Shire Council*  
 Lot 703, 704, 705 & 707 DP 1000580  
 Tweed Valley Way, Chinderah

File: N:\MapInfo 7...IA4P Site Plan.Wor      Author: J.Batchelor      Date: 24/April/2006



STRATEGIC PLANNING UNIT  
**Site Plan**  
 Sheet: 1 of 1

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.



### Instructions to Users

When notifying the Director-General under section 54(4) of the EP&A Act of a decision to prepare a draft local environmental plan, a council will need to complete the 'Section 54(4) Notification Advice' cover sheet and relevant 'LEP Pro-forma Evaluation Criteria' sheet depending on the category of LEP that is the subject of the section 54(4) notification.

## Section 54(4) Notification Advice Cover Sheet

### LOCAL GOVERNMENT AREA:

### NAME OF DRAFT LEP:

### ADDRESS OF LAND (if applicable):

### MAPS (if applicable):

- Location map showing the land affected by the proposed draft plan in the context of the LGA (tagged 'location map')
- **Existing zoning** map showing the existing zoning of the site and surrounding land and **proposed zoning** change for the site/s (tagged 'comparative existing/proposed zoning')

### PHOTOS and other visual material (if applicable):

- Aerial photos of land affected by the proposed draft plan
- Photos or plans showing relationship of land to which the plan will apply and surrounding land uses

### PURPOSE OF LEP:

- Describe the **current** zoning / controls and **changes** proposed by the draft plan. For complex plans, a table or maps to explain changes should be attached
- Explain **why** it has been resolved to prepare the draft plan, i.e. what is triggering the need for the plan
- Provide compelling reasons, clearly stating the reasons for the proposed changes
- Details of any environmental study to be prepared
- Details of consultation procedures to be adopted in preparation of the plan

### JUSTIFICATION FOR LEP:

This should cover matters such as:

1. Policy and strategic context
  - Consistency with State policy / council strategy
  - Public interest reasons for preparing the draft plan
  - Reference to studies and reports
2. Location context
  - Compatibility with surrounding zoning and land use patterns
3. Implications of not proceeding at that time

### EVALUATION AGAINST CRITERIA:

- Provide evaluation against criteria in the relevant pro-forma as applicable to the LEP category

**LEP Pro-forma Evaluation Criteria**

**Category 1: Spot Rezoning LEP**

1.	Will the LEP be compatible with agreed State and regional strategic direction for development in the area (eg land release, strategic corridors, development within 800m of a transit node)?  <i>Explain:</i>	Y/N
2.	Will the LEP implement studies and strategic work consistent with State and regional policies and Ministerial (s.117) directions?  <i>Explain:</i>	Y/N
3.	Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub-regional strategy?  <i>Explain:</i>	Y/N
4.	Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?  <i>Explain:</i>	Y/N
5.	Will the LEP be compatible/complementary with surrounding land uses?  <i>Explain:</i>	Y/N
6.	Is the LEP likely to create a precedent; or create or change the expectations of the landowner or other landholders?  <i>Explain:</i>	Y/N
7.	Will the LEP deal with a deferred matter in an existing LEP?  <i>Explain:</i>	Y/N
8.	Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these	Y/N

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil

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