



AGENDA

PLANNING COMMITTEE MEETING

Tuesday 21 August 2007

Chairman: Mr Max Boyd AM

**Administrators: Mr Max Boyd AM
Mr Garry Payne AM**



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ITEMS FOR CONSIDERATION OF THE COMMITTEE:

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REPORTS THROUGH GENERAL MANAGER		
REPORTS FROM DIRECTOR PLANNING & REGULATION		
P1	[PR-PC] Draft Tweed Local Environmental Plan 2000, Amendment No 76 - Heritage Items	See Planning Agenda Part 1
P2	[PR-PC] Draft Residential and Tourist Code (Section A1 of the Tweed Development Control Plan)	See Planning Agenda Part 1
P3	[PR-PC] Murwillumbah Locality and Master Planning Projects	See Planning Agenda Part 1
P4	[PR-PC] Development Application DA06/0477 for a Six (6) Storey Apartment Building Comprising 38 Units at Lot 24, 25, 26 Section 5 DP 4043, No. 36-40 Enid Street, Tweed Heads	See Planning Agenda Part 1
P5	[PR-PC] Development Application DA06/1334 for Refurbishment of the Riverview Hotel at Lot 1, 2, 3 DP 240942; Lot 1 DP 779847, No. 267 Tweed Valley Way, South Murwillumbah	See Planning Agenda Part 1
P6	[PR-PC] Development Application DA06/0832 for a boundary adjustment at Lot 1 DP 601049; Clothiers Creek Road & Lot 1 DP 1084992; No. 15 Tanglewood Drive Tanglewood	See Planning Agenda Part 1
P7	[PR-PC] Development Application DA06/0897 for a nine (9) lot subdivision at Lot 1 DP 601049; Clothiers Creek Road & Lot 1 DP 1084992; No. 15 Tanglewood Drive Tanglewood	113
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P10	[PR-PC] Development Application DA06/1092 for a Cat Boarding Establishment at Lot 1 DP 581658, No. 275 Burringbar Road, Burringbar	187
P11	[PR-PC] Development Application DA07/0204 for an Electricity Substation at Lot 2 DP 615053 & Part Kirkwood Road adjacent to Lot 2, No. 39 Sunshine Avenue, Tweed Heads South	211

P7 [PR-PC] Development Application DA06/0897 for a nine (9) lot subdivision at Lot 1 DP 601049; Clothiers Creek Road & Lot 1 DP 1084992; No. 15 Tanglewood Drive Tanglewood

ORIGIN:

Development Assessment

FILE NO: DA06/0897 Pt1

SUMMARY OF REPORT:

Council is in receipt of a development application to undertake a nine (9) lot subdivision of proposed Lot A (as per DA06/0832 for a two (2) lot boundary adjustment).

The proposed lots have the following areas:-

- Lots 1 to 5 – 1 hectare;
- Lot 6 – 1.2 hectares;
- Lots 7 and 8 – 1 hectare; and
- Lot 9 – 1.1 hectare.

A formal access road is proposed to service each of the proposed allotments. All services including power and telecommunications will be situated within the road reserve with the road also intended to provide formalised access to the approved five (5) lot subdivision on the adjoining land to the south (refer 1038/2000DA).

It is also proposed to convert a series of farm trails around the property into fire trails for fire fighting purposes. In this regard the fire trails will provide a suitable means of providing access for the Rural Fire Service to the perimeter of the property while also facilitating the separation of vegetation from adjoining properties. The perimeter fire trails will also assist in protecting the adjoining residential allotments within the Tanglewood Estate, which the applicant contends has been poorly designed in terms of bushfire protection measures.

While the proposal is generally compliant with the relevant subdivision provisions, the main issue for consideration relates to the conservation/habitat value of the site. Of particular importance is the question of whether or not unauthorised clearing and other alleged pre-emptive activities were undertaken to avoid environmental constraints that may have otherwise limited the development potential of the land.

Each of these issues is discussed within the body of the report.



RECOMMENDATION:

That Development Application DA06/0897 for a nine (9) lot subdivision at Lot 1 DP 601049 Clothiers Creek Road & Lot 1 DP 1084992; No. 15 Tanglewood Drive Tanglewood 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 37342-3 prepared by McLauchlan Surveying and dated 12.7.07, except where varied by the conditions of this consent.**

[GEN0005]

- 2. The use of crushing plant machinery, mechanical screening or mechanical blending of materials is subject to separate development application.**

[GEN0045]

- 3. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils adopted Development Design and Construction Specifications.**

[GEN0125]

- 4. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.**

[GEN0135]

- 5. Prior to commencement of work, a construction certificate shall be obtained for the works proposed by this consent.**

[GEN0185]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

- 6. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form, be accompanied by the required attachments and prescribed fee.**

Receipt of approval is to be obtained prior to the issue of a construction certificate for works within the development site.

[PCC0075]

7. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works (minimum \$1,000).

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

The bond will be refunded, if not expended, when the final Subdivision/Occupation Certificate is issued.

[PCC0275]

8. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

9. Where earthworks result in the creation of embankments and/or cuttings greater than 1m high and/or slopes within allotments 17° or steeper, such slopes shall be densely planted in accordance with a detailed landscaping plan. Such plan to accompany the Construction Certificate application.

Such plans shall generally incorporate the following and preferably be prepared by a landscape architect:

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- (c) Densely plant with sub-tropical (rainforest) native and exotic species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.

[PCC0455]

10. A traffic control plan in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2 shall be prepared by an RTA accredited person shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]

11. The proponent shall submit plans and specifications with an application for construction certificate for the following civil works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils adopted Design and Construction specifications.
- 1) Construction of a rural standard bitumen sealed road with a 6m (minimum) pavement width for the full extent of the proposed road. It is noted that the steep road grades will necessitate the provision of kerb and gutter for much of it's length, in accordance with TSC Development Design Specification D1.
 - 2) The minimum road reserve width shall be 20m, beyond the extent of the existing access handle for Lot 1 DP 1084992.
 - 3) The depths of cut and fill to facilitate road construction may require batters that could be difficult to contain within the proposed 20m road reserve. In this scenario, the road reserve will need to be widened accordingly.
 - 4) Bitumen sealed driveway access is to be provided to all lots in accordance with TSC Consolidated DCP Item 5.05.6. This includes the requirement for access gates. Details to be shown on the construction certificate application.
 - 5) The road reserve boundary is to be fenced in accordance with TSC Development Design Specification D1 – Item D1.32. Any fencing to be erected shall be fauna-friendly, to permit unhindered dispersal of fauna across the site.
 - 6) The proposed road is to incorporate Koala signage.
 - 7) The construction certificate application will need to incorporate and clearly show the works recommended by the Bushfire Threat Assessment Report, including;
 - a) Construction of passing bays every 200m on the existing perimeter fire trail.
 - b) Minor vegetative clearing at the nominated dwelling sites, to create the required Asset Protection Zones (APZ's).
 - 8) Road design must comply with the requirements of "Planning for Bushfire Protection 2006". This will include the necessary widening of the proposed road pavement at the tight corners.
 - 9) A bitumen sealed turning area (18m diameter) shall be provided at the end of the road, as per TSC Development Design Specification D1 – Item D1.27.3
 - 10) The road design shall make provision for pedestrians and cyclists.

- 11) The proposed road culvert tailouts may require the creation of drainage easements to cover the concentrated discharge flows until they are returned back to the existing natural flow path regimes. The need for easements will be assessed upon submission of the construction certificate application.
- [PCC0875]
12. Prior to the issue of a Construction Certificate the following detail in accordance with Councils adopted Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.
- (a) copies of compliance certificates relied upon
- (b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
- earthworks
 - roadworks/furnishings
 - stormwater drainage
 - landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, sewer, Country Energy and Telstra)

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

13. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.

[PCC1105]

14. A construction certificate application for works that involve any of the following:-

- connection of a private stormwater drain to a public stormwater drain
- installation of stormwater quality control devices
- erosion and sediment control works

Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

Where Council is requested to issue a construction certificate for civil works associated with this consent, the abovementioned works can be incorporated as part of the cc application, to enable one single approval to be issued. Separate approval under section 68 of the LG Act will then NOT be required.

[PCC1145]

15. Erosion and Sediment Control shall be provided in accordance with the following:

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

16. Details of the intended method of water storage are to be submitted to the Principal Certifying Authority for approval. Please note that the minimum storage capacity required shall be 20,000 litres for each dwelling house.

[PCC1215]

17. Prior to the issue of any construction certificate, the proposed boundary adjustment under DA06/0832 will need to be improved, completed, and documentary evidence of registration of the plan of subdivision submitted to Council.

[PCCNS01]

18. Rehabilitation of both the Open Eucalypt Forest and Eucalypt Woodland associations (including weed management and revegetation works) is to be undertaken where unaffected by the APZ, to promote and enhance both the environmental integrity of such areas and connective value between proximate habitats available within the sub region.

[PCCNS02]

19. The applicant is to submit to Council's satisfaction, a plan detailing additional environmental enhancement works across the site. The plan is to concentrate on compensatory planting (particularly koala food trees) in areas that are unaffected by any subdivision works.

[PSCNS03]

20. A Plan of Management relating to koala habitat is to be prepared to the satisfaction of Council's Director of Development Services or his delegate. The Plan is to identify any potential koala food trees on the subject land and outline general measures to ensure the impact of the subdivision on any remaining koala population is minimised.

[PCCNS04]

PRIOR TO COMMENCEMENT OF WORK

21. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.

[PCW0005]

22. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

24. Civil work in accordance with a development consent must not be commenced until:-

- (a) a construction certificate for the civil work has been issued in accordance with Councils adopted Development Design and Construction Specification C101 by:
 - (i) the consent authority, or
 - (ii) an accredited certifier, and



- (b) the person having the benefit of the development consent:**
 - (i) has appointed a principal certifying authority,**
 - (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:**
 - B1: Accredited Certifier – Subdivision certificate**
 - C3: Accredited Certifier – Stormwater Management and facilities design compliance**
 - C4: Accredited Certifier – Stormwater management facilities construction compliance**
 - C5: Subdivision works and building works (location of works as constructed) compliance**
 - C6: Accredited Certifier – Subdivision road and drainage construction compliance**

The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to approval and issue of any Construction Certificate, and
 - (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,**
 - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and**
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.**

[PCW0815]

- 25. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.**

[PCW0835]

- 26. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area where required to the satisfaction of the Principal Certifying Authority.**

[PCW0985]

DURING CONSTRUCTION

- 27. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -**

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

- 28. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:**

- A. Short Term Period - 4 weeks.**

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

- B. Long term period - the duration.**

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

- 29. No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.**

No filling of any description is to be deposited, or remain deposited, within adjacent properties.

[DUR0765]

- 30. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".**

The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.

[DUR0795]

- 31. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.**

[DUR0815]



32. All new residential dwellings (and extensions comprising over 50% of the original floor area) are to fully comply with Tweed Shire Council Development Control Plan, Part A9 - Energy Smart Housing Policy. In order to comply with the Policy consideration must be given to the building envelope, orientation, insulation, ventilation, thermal mass and zoning.

[DUR0915]

33. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.

[DUR0985]

34. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.

[DUR0995]

35. All work associated with this approval is to be carried out so as not to impact on neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -

- Noise, water or air pollution
- Minimise impact from dust during filling operations and also from construction vehicles
- No material is removed from the site by wind

[DUR1005]

36. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. All such materials should be chipped on site and used in landscaping unless it is not possible due to size, non suitability of the material or some other limitation, in which case the material will be disposed of at Council's Stotts Creek depot.

[DUR1015]

37. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

[DUR1025]

38. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

39. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.
- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.
 - (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.
 - (c) That site fill areas have been compacted to the specified standard.
 - (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.

[DUR1805]

40. During the relevant stages of road construction, reports shall be submitted to the PCA by a Registered NATA Geotechnical firm demonstrating.
- (a) That the pavement layers have been compacted in accordance with Councils adopted Design and Construction Specifications.
 - (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.

[DUR1825]

41. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

42. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D, based on the rates contained in Council's current Fees and Charges:-

Roadworks

- (a) Pre-construction commencement erosion and sedimentation control measures
 - (b) Completion of earthworks
 - (c) Excavation of subgrade
 - (d) Pavement - sub-base
 - (e) Pavement - pre kerb
 - (f) Pavement - pre seal
-



- (g) Pathways, footways, bikeways - formwork/reinforcement
- (h) Final inspections - on maintenance
- (i) Off Maintenance inspection

Drainage

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final inspection - on maintenance
- (i) Off maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[DUR1895]

- 43. The contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

- 44. The works are to be completed in accordance with Tweed Shire Councils Development Control Plan, Part A5 - Subdivision Manual and Design & Construction Specifications, including variations to the approved drawings as may be required due to insufficient detail shown on the drawings or to ensure that Council policy and/or good engineering practices are achieved.

[DUR2025]

- 45. The applicant shall obtain the written approval of Council to the proposed road/street names. Approved names are to be in accordance with Council's Road Naming Policy adopted on 7 August 1996 and are to be shown on the Plan of Subdivision accompanying the application for a Subdivision Certificate.

To avoid confusion resulting from duplication of private driveway/accessway name and public road/street names, the applicant shall submit to Council for approval the proposed name(s) of any private driveway/accessways.

[DUR2035]



46. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.

[DUR2185]

47. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials.

[DUR2205]

48. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils adopted Design and Construction Specification.

[DUR2355]

49. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

50. Appropriate measures are to be put in place during the construction and/or demolition period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.

[DUR2405]

51. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/kg.

[DUR2435]

52. Allotment APZ area boundaries are to be clearly designated, to avoid accidental damage to retained vegetation associated with site works.

[DURNS01]

53. A registered spotter-catcher is to be present during all approved clearing works to ensure safe dispersal of fauna towards the Open Eucalypt Forest association.

[DURNS02]

54. Routine monitoring of the continued viability of retained vegetation contained within both the Open Eucalypt Forest and Eucalypt Woodland associations during construction works, by a suitably qualified ecologist.

[DURNS03]



55. All fill and cut batters shall be contained wholly within the subject land.

[DURNS04]

USE

56. 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, odours or the like.

[USE0125]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

57. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[PSC0005]

58. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979, a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT

These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

(a) Tweed Road Contribution Plan:	\$45,136
S94 Plan No. 4 (Version 4.0)	
Sector7a_4	
(b) Open Space (Structured):	\$6,240
S94 Plan No. 5	
(c) Open Space (Casual):	\$1,336
S94 Plan No. 5	
(d) Shirewide Library Facilities:	\$5,504
S94 Plan No. 11	



(e) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$1,048
(f) Community Facilities (Tweed Coast - South) S94 Plan No. 15 South Coast	\$4,672
(g) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$1,600
(h) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$15,974.40
(i) Regional Open Space (Structured) S94 Plan No. 26	\$18,616
(j) Regional Open Space (Casual) S94 Plan No. 26	\$6,840

[PSC0175]

59. Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the works (minimum \$1,000) which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

60. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

[PSC0725]

61. Prior to the issue of a Subdivision Certificate, Works as Executed Plans shall be submitted in accordance with the provisions of DCP16 - Subdivisions Manual and Councils adopted Design and Construction Specification.

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;
- (b) the plans accurately reflect the Work as Executed.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed plans.

[PSC0735]

62. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.

[PSC0825]

63. Prior to the issue of a subdivision certificate the Plan of Management referred to in Condition 19 is to be implemented.

64. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for sewer, water supply and drainage over ALL services on private property.
- (b) A Restriction As To User shall be created over all lots such that;
 - a) Areas external to the nominated building site on each lot are to be maintained for conservation purposes in accordance with the Management Plan referred to in Condition 19.
 - b) Provision of fauna-friendly fencing for all boundary and internal fencing, to permit the unhindered dispersal of fauna across the site.
 - c) Incorporation of domestic animal – dog containment fencing for any future owners with dogs. Such fencing is to be contained within the APZ area or to a maximum of 1000sqm whichever is the larger. Such fencing is to be designed to minimise predation on protected fauna.
 - d) All future owners are to be provided with a copy of the Environmental Education Brochure generally as per the example @ Attachment 7 of the S.E.E. – which is to be amended to change the reference to Gold Coast City Council on page 4, to Tweed Shire Council.

- e) As an advisory measure directed at prospective purchasers, include a statement that the property is not connected to reticulated water or sewerage services, and that alternative arrangements will need to be made for same. This will also need to include provisions to satisfy Rural Fire Service requirements in the event of bushfires.

- (c) Drainage easements may need to be created over the tailouts from road culverts.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

[PSC0835]

- 65. Submit to Council's property officer an appropriate plan indicating the rural address number to both new and existing lots for approval. Prior to the issue of a Subdivision Certificate, each lot shall have its' rural address number displayed in accordance with Council's "Rural Addressing Policy".

[PSC0845]

- 66. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

[PSC0855]

- 67. Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Council within three months of registration of the Subdivision Certificate in accordance with the Survey Practices Regulation.

[PSC0865]

- 68. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 7.6 and Councils Application for Subdivision Certificate including the attached notes.



Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0885]

- 69. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-**

- (a) Compliance Certificate - Roads**
- (b) Compliance Certificate - Drainage**

Note:

- 1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Councils Design and Construction Specifications.**
- 2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".**

[PSC0915]

- 70. The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.**

[PSC0925]

- 71. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of the stormwater pipes and sewerage system including joints and junctions will be required to demonstrate that the standard of the stormwater system is acceptable to Council.**

Any defects identified by the inspection are to be repaired in accordance with Councils adopted Development Design and Construction Specification.

All costs associated with the CCTV inspection and repairs shall be borne by the applicants.

[PSC1065]

- 72. The production of written evidence from the local telecommunications supply authority certifying that satisfactory arrangements have been made for the provision of underground telephone supply.**

[PSC1165]

- 73. The production of written evidence from the local electricity supply authority certifying that the reticulation of overhead electricity (rural subdivisions) has been completed.**

[PSC1175]

74. The nominated building sites and APZ boundaries are to be clearly identified on each lot.

[PSCNS01]

GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997

1. Reticulated water supply shall comply with AS2419. Locations of fire hydrants are to be delineated by blue pavement markers in the centre of the road.
 2. Access is to comply with Section 4.3.1 Planning for Bushfire Protection 2001.
 3. Fire Trails are to comply with Section 4.3.3 of 'Planning for Bushfire Protection 2001'.
 4. At the commencement of building works and in perpetuity, the property around the dwelling (in all directions) on proposed Lots 1, 2 & 3 to a distance of 60 metres shall be maintained as an 'Inner Protection Area' (IPA) and 10 metres shall be maintained as an Outer Protection Area (OPA) as outlined within Section 4.2.2 in 'Planning for Bushfire Protection 2001'.
 5. At the commencement of building works and in perpetuity, the property around the dwelling on proposed Lots 4, 5 & 6 shall be managed as follows:-
 - a) North for a distance of 50 metres as an 'Inner Protection Area; and 10m as an 'Outer Protection Area'.
 - b) South for a distance of 20 metres as an 'Inner Protection Area'; and
 - c) East and west for a distance of 30 metres as an 'Inner Protection Area' and 10 metres as an 'Outer Protection Area'.
 6. At the commencement of building works and in perpetuity, the property around the dwelling (in all directions) on proposed Lots 7 & 8 to a distance of 30 metres shall be maintained as an 'Inner Protection Area' (IPA) as outlined within Section 4.2.2 in 'Planning for Bushfire Protection 2001'.
 7. At the commencement of building works and in perpetuity, the property around the dwelling (in all directions) on proposed Lot 9 to a distance of 50 metres shall be maintained as an 'Inner Protection Area' (IPA) and 10 metres shall be maintained as an Outer Protection Area (OPA) as outlined within Section 4.2.2 in 'Planning for Bushfire Protection 2001'.
 8. Section 88B restriction as to user shall be placed on all lots within the subdivision requiring the provision of the required asset protection zones. These APZ's are based on AS3959 Level 3 Construction.
 9. Any future development of individual allotments identified as bushfire prone land within the new subdivision may be subject to Section 79BA of the EP&A Act 1979 and further assessment as outlined within Planning for Bushfire Protection, 2001.
-



Note: This assessment is based upon the potential dwelling envelopes identified on the subdivision plan prepared by McLauchlan Surveying dated 12/07/06 which formed Appendix A of the Bushfire Threat Assessment Report prepared by Planit Consulting dated July 2006.

REPORT:

Applicant: Mr P Tagget

Owner: Mr PF Taggett and Heavens Door Pty Ltd

Location: Lot 1 DP 601049 Clothiers Creek Road & Lot 1 DP 1084992 No. 15
Tanglewood Drive Tanglewood

Zoning: Part 1(c) Rural Living, Part 6(b) Recreation

BACKGROUND:

The subject land has a long and complex history. Of particular note is the protracted legal action between the respective owners of the subject land (Lot 1 DP 1084992) and the adjoining property to the south (Lot 1 DP 601049) in relation to access provision.

The dispute related to Development Consent 1038/2000DA for a five (5) lot subdivision of Lot 1 DP 601049 (a copy of this consent is attached to this report). Under the conditions of the Development Consent, the subdivision could not be commenced until a 'proposed' right of way was formally registered on the title.

The applications currently before Council being for the boundary adjustment (DA06/0832) and this nine (9) lot subdivision are the result of negotiations on this issue.

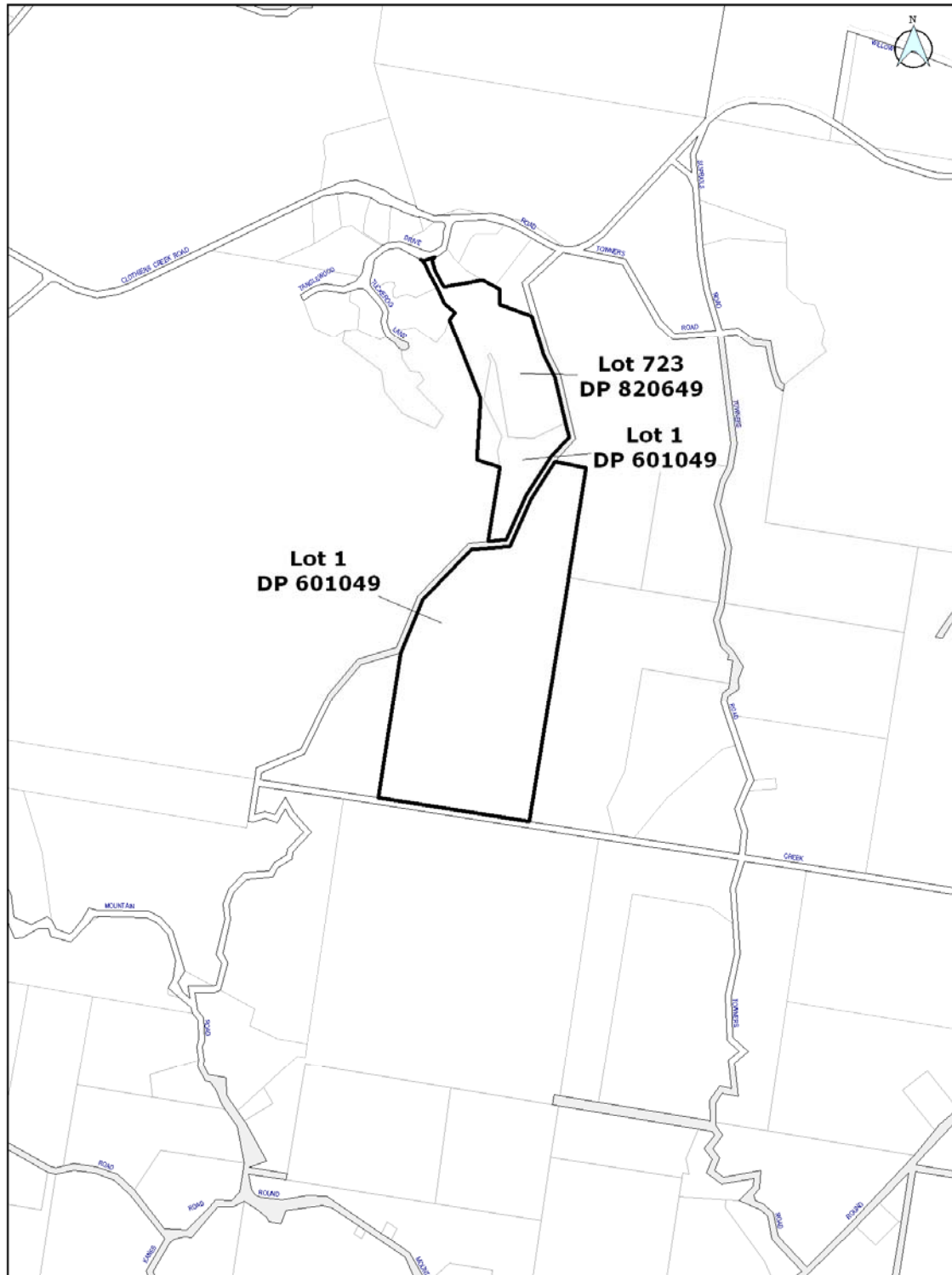
Council has recently signed off on the registration of the right of way, thereby activating the consent for the five (5) lot subdivision of Lot 1 DP 601049 (proposed Lot B under DA06/0832).

Should the current applications be approved, the result will see the 1(c) portion of land, across both parcels, split up into a total of fourteen (14) rural residential allotments and one (1) residual parcel of land zoned for environmental protection.

In terms of more current history, the subject land has been involved in recent investigations regarding illegal clearing and the construction of an unlawful dwelling. Each of these matters is discussed later in this report.



SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2007 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah, NSW., 2494 Tel: (02) 6670 2409 Fax (02) 6670 2483</p>	<p style="text-align: center;"><i>Tweed Shire Council</i></p> <p style="text-align: center;">Lot 1 DP 1084992 Tanglewood Drive Tanglewood & Lot 1 DP 601049 Clothiers Creek Road Tanglewood</p>		<p style="text-align: center;">PLANNING REFORMS UNIT</p> <p style="text-align: center;">Site Plan</p>
<p>File: N:\Munsys\A4P - SITE PLAN.Wor</p>	<p>Author: B. Ingram</p>	<p>Date: 19/July/2007</p>	<p>Scale: 1:15,000 Sheet: 1 of 1</p>

THE SITE

The subject land is surrounded by the Tanglewood Village to the west and north, large rural and bush holdings to the south and south-west and the Cudgen Nature Reserve to the east.

In terms of vegetation, the overall coverage and habitat potential has been reduced in recent years with recent clearing activity to provide for access roads, fire trails and fence lines. Council's Compliance Officer has taken separate action for those instances where it was deemed the clearing was excessive and/or unlawful.

Access to the property is available to Clothiers Creek Road via Tanglewood Drive. The topography is best described as undulating and rises up from Clothiers Creek Road to a height of approximately 120m AHD near the southern boundary.



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 subject land is zoned part 1(c) Rural Living and part 6(b) Recreation. Subdivision such as that proposed, is permissible with consent in both zones.

The proposed subdivision is consistent with the relevant zones objectives as it will not adversely impact on the rural residential character or amenity of the area, nor does it affect the ability of the properties for further development if the land is ever rezoned for more intensive urban purposes. With regard to the 6(b) portion, the boundary adjustment will not adversely affect the ability of the land to be developed for recreational purposes.

Clause 21 – Subdivision in Zone 1(c)

The objectives and provisions of this Clause state:-

(1) Objective

- *to ensure that the semi-rural character and environmental values of the locality are protected.*
- (2) *Consent may be granted to the subdivision of land in Zone 1 (c) for residential purposes only if:*
 - (a) *each allotment will be connected to a reticulated water supply system, or a tank water supply will be provided to the satisfaction of the consent authority, and*
 - (b) *the consent authority is satisfied that each allotment created is capable of accommodating adequate facilities for the treatment and disposal of sewage or will be connected to the Council's reticulated sewerage system, and*
 - (c) *in the case of land to be connected to the Council's reticulated sewerage system – the area of each lot created is not less than 0.4 hectare, and*
 - (d) *in the case of land not to be connected to the Council's reticulated sewerage system - the area of each lot created is not less than 1 hectare.*

The proposed subdivision will result in nine (9) parcels with an area in excess of the minimum 1 hectare. All parcels are of a suitable size for the disposal of effluent on-site, whilst rain water will need to be collected and stored in tanks for domestic purposes following construction of any dwelling houses. It is accepted that the proposed subdivision will not impact upon the rural residential character of the locality and is consistent with the provision of this clause.

Clause 15 – Availability of Essential Services

While the subject land is connected to a reticulated water supply (in Tangelwood Drive), the elevation of the proposed dwelling sites means that booster stations would be necessary to provide adequate pressure. Given the associated costs, the applicant proposes that each allotment harvest its own water via rainwater tanks. Given pre-existing concerns from local residents about water pressure in the area, Council's Engineers are satisfied with the proposed arrangements.

As there is no reticulated sewer in the vicinity, the proposed subdivision will be dependent on an on-site sewage management system. Council's Environmental Health Officers have reviewed this aspect of the proposal and raised no objection.

Both electricity and telecommunications are to be provided to each proposed allotment. Suitable conditions to apply.

Clause 29 – Development adjacent to Zone 8(a) National Parks and Nature Reserves

The subject land is adjacent to an area of the Cudgen Nature Reserve that is identified as a National Park and is zoned accordingly. The objective of the clause is to ensure that development of land adjacent to Zone 8(a) does not have a significant impact on wildlife habitat. To address this issue, the application was referred to the Department of Environment and Conservation who have raised no objections provided Council was satisfied that the proposal complies with relevant legislation.

Further discussion on the issue of potential habitat impacts is provided later in this report.

Clause 39 – Remediation of Contaminated Lands

The issue of soil contamination on the subject land has been recently investigated as part of previous development applications (refer DA04/0311). While the general, wider area has been used historically for banana cultivation, the applicant has provided a preliminary Site Contamination Report and a statutory declaration indicating that the land subject to the application was not affected by any potentially contaminating activities. Council's Environmental Health Unit has raised no objection subject to appropriate conditions of consent.

North Coast Regional Environmental Plan 1988

The proposed subdivision is consistent with the provisions of the North Coast REP as they relate to development on rural land. In this regard, the proposal will not result in the loss of prime crop or pasture land, nor impact on surrounding rural landholdings.

State Environmental Planning Policy No.44 – Koala Habitat Protection

In February 1995, the NSW Department of Infrastructure, Planning and Natural Resources enacted State Environmental Planning Policy Policy No.44 – Koala Habitat Protection. The policy aims to 'encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.'

In areas where the policy applies a number of criteria are to be addressed to determine levels of assessment and govern management considerations. An assessment pursuant to SEPP No.44 has been carried out by the applicant within the supporting Ecological Assessment.

The following comments are made in relation to the relevant provisions under the SEPP.

1. Does the policy apply?

Yes. The land is approximately 11 hectares in area and is located within the Tweed Local Government Area.

2. Is the land potential koala habitat?

The SEPP defines 'potential koala habitat' as 'areas of native vegetation where trees of the types listed in Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.'

The applicant claims that whilst trees listed in Schedule 2 do occur on the subject land they do not represent 15% or greater of the total number of trees present within the upper and lower strata of noted vegetation communities.

This is contrary to survey information provided by the applicant which indicates that one of the three dominant canopy species in both the open eucalypt forest and eucalypt woodland communities (as identified in the Ecological Report), is a SEPP No.44 koala food tree.

No numerical data has been provided to support the applicants claim that the site contains less than 15% of trees listed in Schedule 2. Advice from Council's Environmental Scientist suggests that based on investigative work of their own, certain parts of the site could in fact exceed the 15% ratio.

Given the apparent uncertainty and lack of any conclusive evidence by the applicant it is considered appropriate to adopt a precautionary approach to the issue and presume that the land may indeed contain potential koala habitat.

3. *Is the land core koala habitat?*

The SEPP defines 'core koala habitat' as 'an area of land with a resident population of koalas evidenced by attributes such as breeding females (that is females with young) and recent sightings of and historical records of a population.'

The applicant claims that no direct observations were made on site during survey works (either in 2003 or 2006), although scats were recorded. A number of historical recordings of the Koala are known for the surrounding area.

Given the historical records of population and evidence of scats identified by the applicant, it is considered that the land may constitute core koala habitat.

4. *Is there a requirement to prepare a Plan of Management for land containing core koala habitat?*

Based on the conflicting claims of the applicant versus the observations of Council's Environmental Scientist, it is considered that the issue of whether the land contains potential or core koala habitat is inconclusive.

On this basis, it is considered reasonable to require a Plan of Management or similar with a view to identifying any significant food trees that may be able to be retained. A condition of consent is proposed in this regard.

Should the applicant contest this requirement, it is open to them to submit a Section 96 application to have the condition removed – provided it can be demonstrated that the existing vegetation across the site contains below the 15% ratio of trees in Schedule 2, as specified by the SEPP.

In summary, compliance with the provisions of SEPP No.44 is considered difficult to determine on the basis of the information provided. Council's Environmental Scientist has confirmed that the entire site is mapped by Australian Koala Foundation as Class A secondary koala habitat and that two (2) primary koala feed trees occur on the site (*Eucalyptus microcorys* and *Eucalyptus propinqua*) with two (2) further primary koala feed trees occurring in adjacent Cudgen Nature Reserve (*Eucalyptus robusta* and *Eucalyptus tereticornis*) and along Clothiers Creek Road.

Further comments on the recent vegetation clearing that occurred on the site and the impact this may have had on the results of the Ecological Report are provided below:-

'The conclusions made in the SEPP 44 assessment and Section 5A assessment for the koala under the Environmental Planning and Assessment Act 1979 (7 part test) are likely to have been biased by recent vegetation clearing on Lot 1 DP 1084992, with conclusions being largely based on the absence of any direct koala observations. Areas of secondary koala habitat have been recently cleared with removal of key koala food trees likely. It is also possible that vegetation clearing has resulted in the fatality of koala(s). Accordingly, home ranges and movements of koalas in this area are likely to have been disrupted, potentially accounting for the absence of direct observations of koalas on the site. Additionally, as Phillips (2002) found home range sizes for individual koalas to be on average 13 to 15 hectares (with alpha males having considerably larger home ranges) and the survey area to assess koala presence was confined to Lot 1 DP 1084992 being 11.2 hectares, it is possible koalas that utilise Lot 1 DP 1084992 were present in areas of adjacent suitable habitat at the time of survey.'

Further discussion on the issue of clearing and impacts associated with the subdivision are provided below.

As discussed, it is considered appropriate (given the uncertainty regarding the habitat value of the site) to require a Plan of Management via a condition of consent.

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

There are no draft EPI's applicable to the proposed subdivision.

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

Section A5 – Subdivision Manual

The proposed subdivision has been designed in accordance with the provisions of Section A5 of Council's Consolidated DCP. The applicant has raised the following points in support of the application:-

- *Infrastructure such as power and telecommunications are readily available to the properties;*
- *Water would be provided to any new dwelling by way of collection of rain water into tanks for domestic purposes. Due to poor pressure, reticulated water will not be provided to the estate, however a fire hydrant will be located near the entrance of the development at Tanglewood Drive within the road reserve;*
- *Each lot can easily accommodate the minimum building envelope of 10 metres by 15 metres;*
- *Access would be provided in accordance with Council's requirements within a 16 metres wide road reserve with a 9 metre wide pavement.*
- *Earthworks required for the proposed subdivision would be minimal and restricted primarily to the construction of the road and laying of services and infrastructure.*

Council's Development Engineer has raised no objection to the comments made by the applicant with the exception of the construction criteria for the access road. In this regard, a 20 metre road reserve is to be required with minimum 6 metre centre seal and kerb and guttering for much of the road length. Suitable conditions to apply.

It is considered the proposal is consistent with the requirements of Section A5 of Council's Consolidated DCP.

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

Satisfactory.

(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

Flora and Fauna

In their submission, the applicant claims that the proposed subdivision will '*not have an adverse impact upon the built or natural environment*'. Minor additional clearing is required to provide the necessary Asset Protection Zones to protect future residences from bushfire. An Ecological Assessment has been submitted in support of the application which concludes that the additional clearing required will not impact upon the natural environment, species listed under the Threatened Species Conservation Act 1979, or Koala Habitat.

As discussed earlier, it is possible that the severity of these impacts has been substantially reduced by previous clearing across the site.

Council's Environmental Scientist has reviewed the development application and supporting information and provided comments in relation to the potential impacts on flora and fauna.

A summary of these comments is provided below:-

- There is no raw data provided in the application material to support the claim that the subject land is neither potential nor core koala habitat.
- The majority of recommended effluent application areas for each of the nine (9) proposed lots are located within areas possessing native vegetation. Installation of subsurface drip irrigation in these areas would require vegetation removal and potentially impact flora and fauna. This has not been address in the application material.
- Section 4.7 of the Bushfire Threat Assessment Report states 'no significant environmental features of threatened species of flora and fauna are found on this residential property'. This is contrary to results of flora and fauna surveys which recorded three (3) threatened mammals and identified potential habitat for a further ten (10) species of threatened fauna. Stating incorrectly that the site contains no threatened fauna may potentially bias in favour of the applicant.
- The Vegetation Assessment in the Ecological Report is inconsistent with the Tweed Vegetation Management Strategy which identifies the site as having high ecological status. The Ecological Report acknowledges that this discrepancy is due to site influences over a three (3) year period and refers to a rehabilitation plan which has been submitted to Council for those disturbed areas of the site.
- A comparison of aerial photography dated 2004 and recent aerial photography dated 2006 suggests that clearing and under scrubbing occurring between 2004 and 2006 is the predominant cause for the mapping discrepancy. Areas of clearing and under scrubbing coincide with proposed dwelling envelopes, asset protection zones, fire trails and proposed roads.
- The vegetation clearing and under scrubbing that appears to have occurred between 2004 and 2006 has lead to a reduction in conservation value of the site, thereby influencing the conclusion made in the Ecological Report that the proposal does not significantly impact upon the sites flora and fauna habitat values.

While it is acknowledged that certain clearing works may have occurred to undermine the environmental significance of the land, this activity has been the subject of a separate investigation and is not directly related to the current applications before Council.

In this regard, it is noted Council's Compliance Officer has been involved in such investigations with Rehabilitation Works currently being undertaken across certain areas of the site.

The assessment of impacts in relation to the current applications must be based on the current state of the site. The impacts associated with the proposal are within reasonable limits given the zoning of the land, the absence of any tree preservation order over of the property, the existing low/moderate-conservation value of the site and the overall intended land-use.

To minimise any impacts and ensure the best possible environmental outcome, conditions of consent are proposed requiring additional compensatory environmental enhancement works across the site.

These additional works are to be provided in accordance with the requirements of Council's Environmental Scientist.

(c) Suitability of the site for the development

The question of suitability of the subject site in accommodating the proposed subdivision is largely dependent on the ecological/conservation value the land.

In this regard, it is not possible for Council to pre-suppose what the previous condition of the site may have been. Rather, it is the environmental significance of the site, in its current state, that must form the basis of assessment.

Under this scenario, it is considered that the subject land may be considered suitable in accommodating the proposed development. Critical to this conclusion is the zoning of the subject land.

The 1(c) Rural Living zone identifies the land for some type of rural residential development. Given the zoning of the land and the (albeit recently) disturbed nature of the land, the subject site is considered suitable in accommodating the proposed subdivision. The proposal has been designed so that the access road generally follows the spine of the ridge which traverses the property in a general north south direction. Each lot is of a suitable area so that effluent can be safely disposed of without impacting on local watercourses.

Site contamination has also been investigated pursuant to the provisions of SEPP No.55 and found to be satisfactory.

The applicant has prepared a Bushfire Threat Assessment Report with recommendations in terms of asset protection zones, future construction standards, access and fire trails which has been reviewed by the Rural Fire Service and found to be satisfactory subject to General Terms of Approval.

All necessary services for a rural residential subdivision are available to the proposed allotments including access, power and telecommunications. It is noted that while reticulated water is available in Tanglewood, pressure is a significant issue and the development as such, the development is to be dependent rainwater tanks for domestic and fire fighting purposes.

Given the matters raised above, the subject land is considered suitable in accommodating the proposed subdivision.

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

The application was notified for two (2) weeks in accordance with Council's Notification Policy. DA06/0832 for the two (2) lot boundary adjustment was advertised for the same period.

During this period a total of twenty-three (23) submissions were received relating to both applications.

Of the twenty-three (23) submissions, seventeen (17) were letters of support. Arguments raised in favour of the development included the following:-

- Zoning – the proposed boundary adjustment and subsequent subdivision represents the realisation of the intended land use and is consistent with the 1(c) zone objectives.
- Bushfire Management – The proposal will result in the creation of formal bushfire trails and vegetation removal which will assist in mitigating the bushfire hazard which threatens the Tanglewood area.
- Access – the proposal will formalise access arrangements which currently rely on the goodwill of the current owner.
- Compliance – the proposal generally complies with the minimum allotment size and effluent disposal requirements and achieves a suitable level of rural amenity.

In terms of the six (6) letters of objection, the following issues were raised:-

Issue:- Erection of an unlawful dwelling

The applicant has erected an unlawful dwelling on a location specifically precluded under a previous development consent due to its environmental significance.

Comment:-

During a site inspection of the property on 24 October 2006, it was observed that an illegal dwelling had been erected on Lot 1 DP 1084992 within the nominated house site for Lot 3 of the proposed nine (9) lot subdivision.

The matter was made more serious by the fact that the structure occupies an area which was specifically identified in a previous subdivision proposal (DA04/0311) for its environmental significance (a copy of the two (2) lot subdivision is attached to this report). In this regard, the flora and fauna assessment prepared in support of DA04/0311 concluded that the construction of a house in this location was not recommended due to the need to remove core koala food trees and feed trees of the glossy black cockatoo. These findings were reinforced in the assessment and approval of the application and the associated consent conditions.

Of particular note are the following consent conditions:-

4. The designated building area identified as Site 1 in the On-site Sewage Management Design Report prepared by HMC Environmental Services dated November 2003 is NOT approved by this consent. The designated building area, site 2, is approved by this consent.

23. *The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including the following:*
 - i. *Easements for sewer, water supply and drainage over **ALL** services on private property.*

 - ii. Any future development application over Lot 1 is to be sited in the designated building identified as site 2 in the On-site Sewage Management Design Report prepared by HMC Environmental Services dated November 2003.

 - iii. Any future development application(s) over Lot 1 are to be accompanied by a Bushfire Management Plan and Flora and Fauna Assessment. *The reports are to be prepared by suitably qualified professionals and in accordance with the relevant regulations and guidelines.*

As illustrated, the abovementioned consent conditions specifically precluded the area of the subject site where the illegal dwelling was constructed.

In response to the illegal works and apparent breach of the above consent conditions, Council's Compliance Officer wrote to the landowner on 26 October 2006 seeking a written explanation and any reasons as to why Council should not initiate legal proceedings to have the house removed and the site rehabilitated.

The applicant responded by raising the following points:-

- No-one is residing within the building and that it is only being utilised for the purposes of storage of machinery and wash facilities associated with workers on the property.
- No vegetation was removed to accommodate the structure – a statutory declaration provided by a local farmer is provided in support of this claim.
- The habitat value placed on the site is unfounded.
- The findings of the Flora and Fauna Report were inaccurate and influenced by a dispute between parties in relation to the ownership of the subject lands.
- Council's Compliance Officer has not been witness to any vegetation clearing in the area.

- The environmental merits of the site should be looked at in the context of the existing subdivision application. i.e. approval of the subdivision application would necessitate clearing of the subject land to provide for dwelling house site, fire breaks and asset protection zones.

Based on the points above and the claim that no vegetation was removed the applicant proposed the following measures to address the apparent breach:-

- To ensure the building is uninhabitable, all kitchen and bathroom facilities are to be decommissioned;
- Structural certification to be sought and a building certificate applied for.

Having reviewed the applicants submission it was decided to accept the proposal and to also issue a Penalty Infringement Notice (PIN) of \$600 for the unauthorised work. It was also considered appropriate that as part of any approval of this application and the application for the nine (9) lot subdivision that there be compensatory environmental enhancement works elsewhere on the subject land.

The applicant has subsequently decommissioned the kitchen and bathroom facilities and paid the PIN.

As well as this in response to a notice of intention to issue a notice to demolish the structure the applicant has lodged a development application to use the structure as a dwelling house (DA07/0747). That application is currently being assessed but will not be finally determined until a decision is made on the nine (9) lot subdivision application given that it is located on one of those proposed lots.

Issue: Pre-emptive Clearing

The applicant has undertaken significant clearing across the subject land over an extended period with a view to degrading the environmental significance of the site and thereby facilitate the approval of the boundary adjustment and subdivision.

Comment:-

Council's Compliance Officer has been involved in a long-running investigation into alleged illegal clearing over the subject land. The earliest reports of illegal clearing date back to 2005. Investigations done at this time found that although there is no Tree Preservation Order in place over the subject land, the clearing works undertaken between February and March of 2005 for survey work, fencing and firebreak purposes may have been excessive.

The issue was reported to the Council meeting of 30 November 2005 with Council resolving as follows:-

RESOLVED that:-

1. *The owners of Lot 1 DP 1084992 Tanglewood Drive, Tanglewood be requested to prepare a Rehabilitation Plan for the cleared area on the western side of the property, The Plan is to be prepared by a suitably qualified person and lodged with Council by 30 January 2006 to be assessed and approved by the Director of Planning and Development.*
2. *The rehabilitation works referred to in (1) are to be completed to the satisfaction of the Director of Planning and Development by 31 March 2006.*
3. *Council defers any decision to take legal action pending the outcome of the landowner's offer to provide a Rehabilitation Plan and undertake rehabilitation works. Should that Plan not be undertaken to a satisfactory standard by 31 March 2006, then a report is to be prepared for Council to reassess the situation and determine whether legal action is warranted.*

The result of this investigation saw the applicant submit a Rehabilitation Plan to Council's satisfaction in February 2006. The progress of the rehabilitation works have been monitored by Council's Compliance Officer and Environmental Scientist with mixed reports on its success over the past 18 months.

A progress report was prepared for the Council meeting of 6 March 2007 where it was resolved to continue to monitor the situation on site in accordance with the approved rehabilitation plan.

The issue of alleged pre-emptive clearing was also incorporated into comments from Council's Environmental Scientist on the proposed boundary adjustment and subdivision. The conclusion within these comments are reproduced below:-

Conclusion

A desktop and site assessment has concluded that:

- *It appears the proponent of DA06/0897 has undertaken pre-emptive activities aimed at degrading the site to avoid constraints associated with threatened species. It is likely these activities have had a detrimental impact on the koala and glossy black cockatoo. The development application should be assessed with respect to the condition of land at a point in time prior to clearing. The SEE and associated flora and fauna report fails to do this.*
- *SEPP 44 is applicable to Lot 1 DP 1084992 with the site providing potential and core koala habitat and the area contributing to habitat utilised by a significant koala population known from the Pottsville – Searanch – Round Mountain area.*



- *Sediment and erosion controls as a consequence of vegetation clearing and earthworks at Lot 1 DP 1084992 are either not present or inadequate and sediment load is leaving the site via local waterways.*
- *Rehabilitation works within disturbed areas on the western perimeter of Lot 1 DP 1084992 do not appear to have been undertaken to a satisfactory standard. Furthermore the rehabilitation plan fails to properly address rehabilitation of the western portion of the site. As these areas would have required clearing for DA06/0897, the proponent has gained advantage from this clearing and it appears the proponent does not intend to rehabilitate these areas.*
- *A dwelling has been erected in proposed Lot 3 of DA06/0897. According to the Tweed Local Environment Plan 2000, erection of a dwelling house on land zoned 1(c) Rural Living requires development consent. It is understood this has not been gained. In light of the location of this house within an area not recommended due to occurrence of known habitat for two vulnerable species, being koala and glossy black cockatoo (DA04/0311) and undertaking of vegetation clearing in this area for dwelling erection and bushfire protection, a development application should have been prepared to enable a full assessment of impacts to threatened species.*

In relation to the abovementioned comments from Council's Environmental Scientist, the following points are offered:-

- Recent inspections of the rehabilitation works have indicated improved progress on the state of the affected areas. The matter is due to be reported to Council again in November 2007.
- Council's Compliance Officer maintains that despite numerous visits to the site there has been no evidence of any recent vegetation clearing on the subject land.
- A comparison of aerial photographs of the property show a distinct reduction in vegetation coverage between 2000, 2001 and 2006. When the proposed subdivision plan is overlaid onto the 2006 aerial photo, it is apparent that there is some correlation between the cleared areas and the proposed building envelopes, asset protection zones, fire trails and proposed roads.

Given the zoning of the subject land and the level of evidence in relation to past clearing activities on the site further legal action in this issue may not result in a successful prosecution.

There is however an opportunity and merit in requiring the applicant to undertake certain environmental enhancement works across those areas of the site that will remain unaffected by the proposed subdivision. Suitable conditions are proposed in this regard. Rehabilitation of all the land is required.

This would be in addition to the requirements of the Council resolution of 30 November, 2005, referred to earlier in this report.

(e) Public interest

The proposed subdivision represents the realisation of the intended land use for the site and is not considered inconsistent with the public interest.

OPTIONS:

1. Approve the proposed subdivision subject to conditions of consent in accordance with the recommendation.
2. Refuse the application and provide reasons for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the applicant is dissatisfied with the decision he has the right of appeal in the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposal is generally compliant with all relevant statutory controls pertaining to rural residential subdivision. There are no areas of non-compliance that could be used to formulate reasons for refusal.

Based on an assessment of the current level of environmental significance (habitat value) of the site, it would be difficult to refuse the application on the grounds that the proposal would have a significant adverse impact.

It remains plausible that the construction of the illegal dwelling, fire trails, access roads, and fence lines have all contributed to the degradation of the conservation value of the site however refusing the current applications on this basis may be unrealistic – particularly in light of the zoning of the land as well as Council's previous (separate) actions and the strength of evidence.

The application is therefore recommended for conditional approval with a requirement to improve the environmental quality of all the land outside the house pad areas.



UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "**non confidential**" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).

1. Approved plan of five (5) lot subdivision - Consent No. 1038/2000DA dated 19 January 2001 (DW 1648328)
 2. Plan of boundary adjustment (DA06/0832) (DW 1648331)
 3. Plan of nine (9) lot subdivision (DA06/0897) (DW 1648338)
 4. Plan of zoning of land (DW 1648340)
 5. Plan of two (2) lot subdivision (DA04/0311) (DW 1648342)
-

P8 [PR-PC] Development Application DA06/1458 for a Detached Dual Occupancy at Lot 378 DP 715226, No. 9 Castlecrag Avenue, Banora Point

ORIGIN:

Development Assessment

FILE NO: DA06/1458 Pt1

SUMMARY OF REPORT:

Council has received an application for a two storey, detached dual occupancy dwelling at the abovementioned address.

The proposal has been assessed against the Council's LEP and DCP and is recommended for refusal given that it does not comply with Performance Criteria in section A1 and A2 of Council's DCP relating to stormwater, provision of private open space and vehicle access.

The Council received six submissions in response to the development. It is noted that some of the matters raised by submitters have not been adequately addressed in the application.

RECOMMENDATION:

That Development Application DA06/1458 for a detached dual occupancy at Lot 378 DP 715226, No. 9 Castlecrag Avenue, Banora Point be refused for the following reasons: -

- 1. The proposal is not compliant with Performance Criteria in section A1 of Council's DCP (Multi-Dwelling Housing and Tourist Accommodation), particularly relating to stormwater and open space.**
- 2. The proposal is not compliant with Section A2 of Council's DCP (Site Access and Parking Code).**
- 3. Insufficient information has been provided to determine the impact of the dwelling on the streetscape character.**
- 4. The design of the dwelling does not allow for suitable residential amenity for future occupants.**



REPORT:

Applicant: Chris Lonergan Town Planner
Owner: Mr GM Park
Location: Lot 378 DP 715226 No. 9 Castlecrag Avenue, Banora Point
Zoning: 2(a) Low Density Residential
Cost: \$180,000

BACKGROUND:

- The subject allotment was created from a subdivision approved by Council in 1985.
- Council approved the existing two storey brick dwelling in January 1987.
- Council's Development Assessment Panel refused an application for a detached dual occupancy dwelling and carport at the subject allotment on 13 July 2005.
- The applicant modified the proposal and presented the amended plans to DAP for comment on 19 July 2006. DAP minutes include suggested amendments to the design relating to car parking arrangements and privacy screens. The applicant was also advised to address matters raised by submitters and reasons for refusal.

Proposal/Site Description

Council has received an application for a two storey, detached dual occupancy dwelling at the abovementioned address.

The subject site has an area of approximately 1001m². It is currently improved with a two storey brick detached dwelling on the western portion of the allotment. The existing dwelling has a gross floor area of approximately 300m²

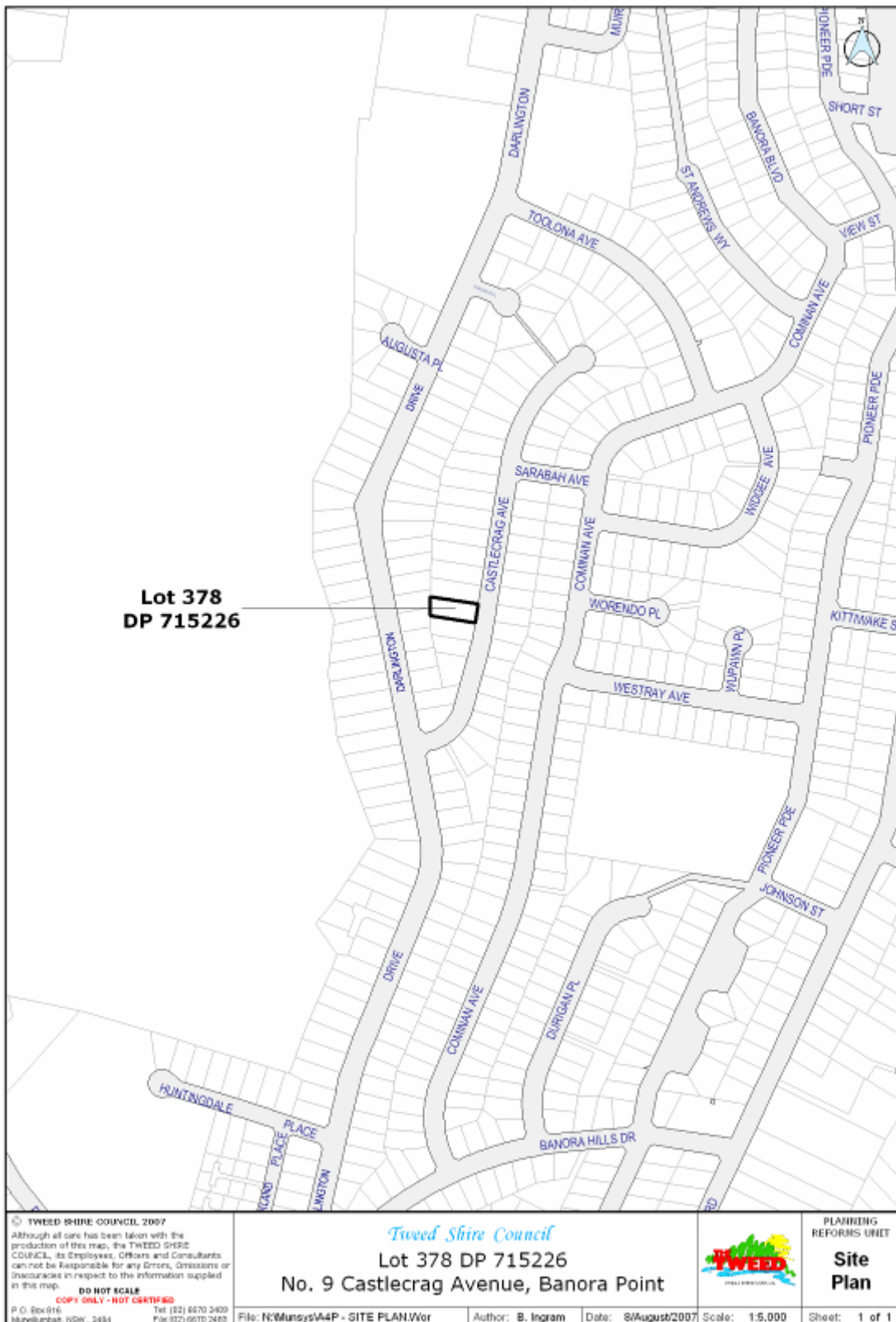
The allotment has a frontage of approximately 20 metres to Castlecrag Avenue and runs on an east / west axis.

The slope drops from the road in a south west direction, ranging from approximately RL39m in the northeast corner to RL24.95m in the site's southwest corner. On-site vegetation consists of various cocos palms, bottle brush and common garden species. (Refer photo below).





SITE DIAGRAM:



DEVELOPMENT PLANS:

<p>Shop 5 / 130 Jonson Street Byron Bay, NSW 2481 P.O. Box 2585, Byron Bay 2481 Ph. (02) 66809255 Fax. (02) 66809277 t1ono@designevolutions.com.au</p>	<p>drafting & design design evolutions</p>	<p>Plan Type: ELEVATIONS PLAN Description: PROPOSED CONSTRUCTION OF A 2 STOREY DWELLING LANDSCAPING & PARKING AREA TO CREATE A DUAL OCCUPANCY Property Description: LOT 378, DP 715226 No. 9 CASTLECRAG AVENUE, BANORA POINT, TWEED SHIRE Scale: 1:100 Job No. Date: 06/11/06 Drawn By: T. Lonergan, checked by C. Lonergan</p>
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PLAN No. P3

PLAN No. P3

PLAN No. P3

WEST

SOUTH

EXTERNAL LATTICE PRIVACY SCREEN TO LOWER WINDOW.

STREET ELEVATION

EXISTING DWELLING TO THE SOUTH

EXISTING DWELLINGS TO THE NORTH

PROPOSED DUAL OCCUPANCY - CONSTRUCTION AND WINDOWS TO MEET S.C.R. REQUIREMENTS AND NS20/1 FOR SEPARATE QUARTERS

Proposed Northern Windows to be Opaque Glass 5 - 6 Lines Shown

SECTION C/C


AMENDED PLAN
05/02/2007

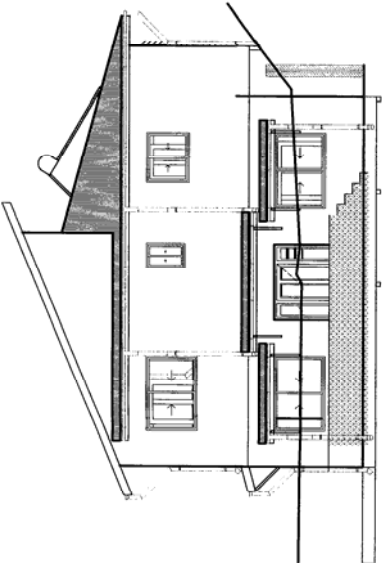
Plan Type	PLAN	Description:
		PROPOSED CONSTRUCTION OF A 2 STOREY DWELLING
		LANDSCAPING & PARKING AREA TO CREATE A DUAL OCCUPANCY
Property Description:		
		LOT 3/9, DP 715235
		NO. 9 CASTLECRAG AVENUE, BANORA POINT, TWEED SHIRE
		Scale 1:200
		Job No.
		Date: 05/11/06
		Drawn By: T. Longprad; Checked: C. Longprad

PLAN No. **PA1**

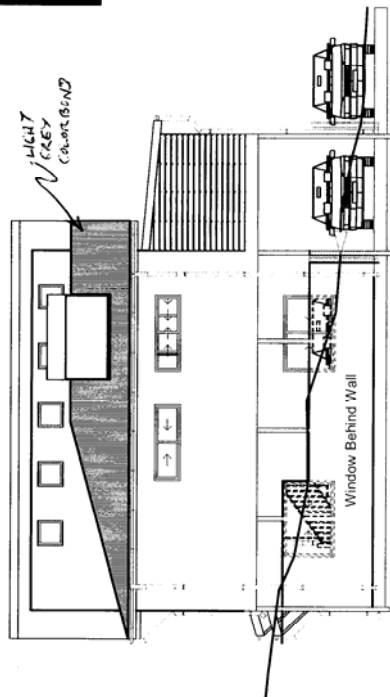
Shop 5 / 130 Jordan Street
Byron Bay, NSW 2481
P.O. Box 2385, Byron Bay 2481
Ph. (02) 66809255 Fax. (02) 66809277
+tone@designevolutions.com.au

design evolutions
drafting & design


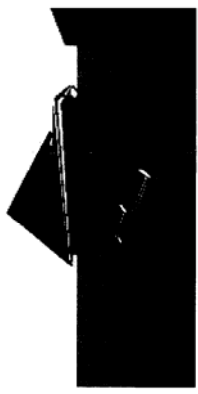
<p>Shop 5 / 130 Jonson Street Byron Bay, NSW 2481 P.O. Box 2585, Byron Bay 2481 Ph. (02) 66809255 Fax. (02) 66809277 t1on0@designevolutions.com.au</p>	 <p>design evolutions drafting & design</p>	<p>Plan Type: ELEVATIONS PLAN</p> <p>Description: PROPOSED CONSTRUCTION OF A 2 STOREY DWELLING LANDSCAPING & PARKING AREA TO CREATE A DUAL OCCUPANCY</p> <p>Property Description: LOT 378, DP 715226 No. 9 CASTLECRAIG AVENUE, BANORA POINT, TWEED SHIRE</p> <p>Job No.: 1:100 Scale: 1:100 Date: 06/11/06 Drawn By: T. Loneragan; checked by: C. Loneragan</p>
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EAST



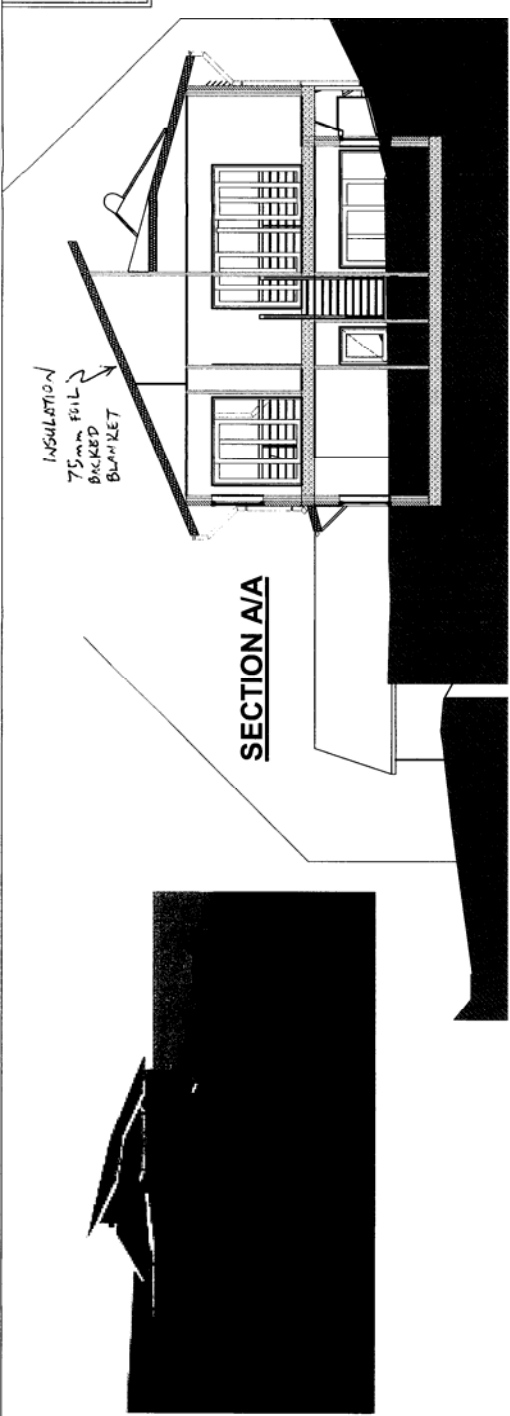
NORTH

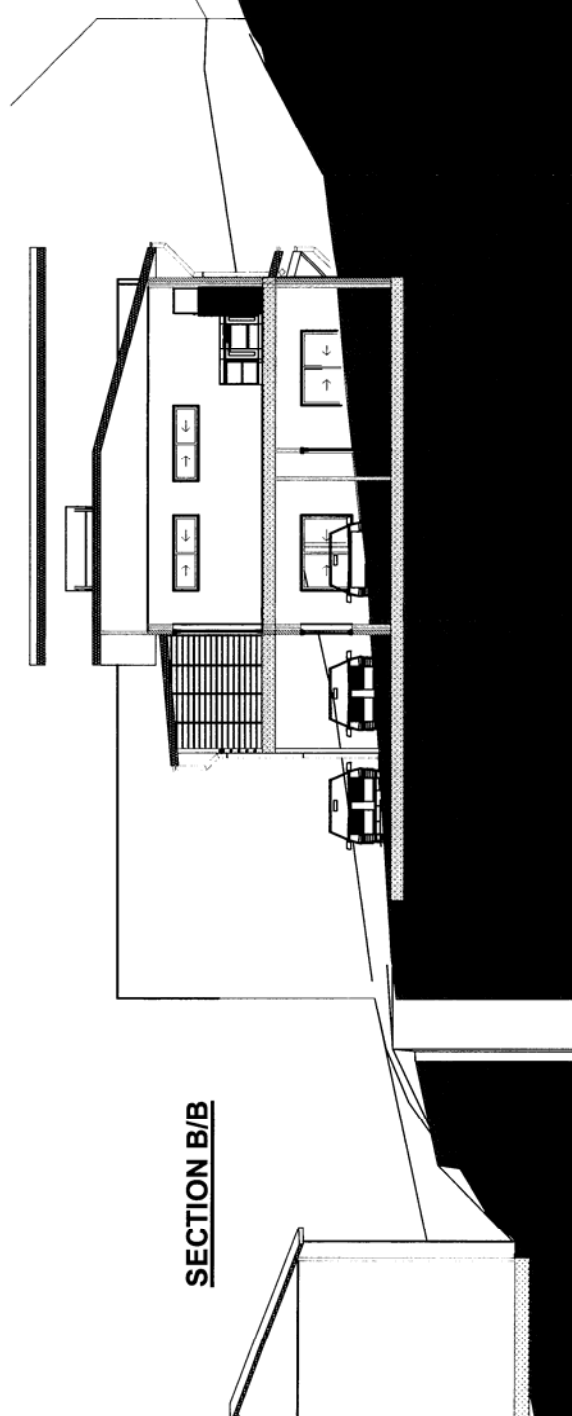
PLAN No. P7

<p>Shop 5 / 130 Jonson Street Byron Bay, NSW 2481 P.O. Box 2585, Byron Bay 2481 Ph. (02) 66809255 Fax. (02) 66809277 ttono@designevolutions.com.au</p>	 drafting & design design evolutions	<p>Plan Type: SECTIONS PLAN</p> <p>Description: PROPOSED CONSTRUCTION OF A 2 STOREY DWELLING LANDSCAPING & PARKING AREA TO CREATE A DUAL OCCUPANCY</p> <p>Property Description: LOT 378, DP 715226 No. 9 CASTLECRAG AVENUE, BANORA POINT, TWEED SHIRE</p> <p>Job No. 1:100</p> <p>Date: 06/11/06 Drawn By: T. Lonergan; checked by: C. Lonergan</p>
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SECTION A/A



SECTION B/B



PLAN No. PG

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****Zone 2(a) Low Density Residential**

The subject site is located within the 2(a) Low Density Residential Zone.

The purpose of the 2(a) zone is to provide and maintain a low density residential environment with a predominantly detached housing character and amenity.

Secondary objectives seek to allow for some diversity of housing types provided they achieve good urban design outcomes at a density, scale and height compatible with the primary objectives.

Whilst the proposed duplex will introduce a greater diversity to housing types in the area, it is not considered that good design outcomes are achieved. In particular, the proposed private open space is not usable and has undesirable solar orientation. Further, the bedrooms proposed on the ground floor will have limited amenity given their proximity to the shared access and car parking spaces.

It is also considered that insufficient information has been provided to determine that the proposal will not have an unacceptable impact on the streetscape and amenity of adjoining dwellings.

In this regard, the proposed duplex is not considered to comply with the objectives of the zone in relation to site planning, layout and urban design qualities.

Clause 15 - Availability of Essential Services

The site has access to essential services including water supply, electricity and telecommunication services.

The applicant has indicated that connection to sewer is possible, however details of connection have not been provided. A sewer main is located at the rear of the site within an easement for drainage.

Clause 16 – Height of Buildings

The maximum permissible height at the site is 3 storeys. The proposed detached dual occupancy dwelling has a height of approximately 8.5 meters at the highest point and is comprised of 2 storeys. The proposed height does not exceed the maximum height limit.

Clause 17 – Social Impact Assessment

A Social Impact Assessment is not considered necessary in this instance, with regard to the minor scale and nature of the proposal.

Clause 32 – Aircraft Noise

The subject site is located within the ANEF 2020 – Aircraft Noise Exposure contour.

Part 5 of Clause 32 states that where land is within the 20 or higher ANEF contour, Council can consent to the erection or use of a dwelling house (a building containing only one dwelling), provided conditions are imposed to ensure that the building will meet construction requirements of Australian Standard AS 2021.

The applicant was requested to confirm that the proposed building is able to meet the construction requirements of Australian Standards AS 2021. The applicant responded by indicating that the “attenuation of aircraft noise is achieved by the use of windows with glazing which meets AS2021”.

Council’s Health and Regulatory Services Branch have indicated that this advice is not sufficient and an aircraft noise assessment is required, prepared by a qualified and practicing acoustic consultant. This has not yet been requested.

Clause 39 Remediation of Contaminated Land

Council’s Environmental Health Officer has identified that contamination is not considered a constraint for the site.

Clause 51A Multi-Dwelling housing Density in Zone 2 (a)

The purpose of this clause is to control the density of multi-dwelling housing the 2 (a) zone. The clause allows for 1 dwelling per 450m² of site area. The proposal meets this requirement as 2 dwellings are proposed on an area of 1001m², allowing for approximately 500m² / dwelling.

Clause 56 Suspension of Covenants, Agreements and Similar Instruments

Clause 56 allows the suspension of any covenants, agreements or similar instruments in order to enable development carried out in accordance with the Tweed LEP 2000.

The site is subject to a section 88B Instrument, made under the provisions of the Conveyancing Act 1919. This contains a restriction as to the user that burdens the allotments in the plan (including the subject site) to the effect that only single dwellings are permitted on each allotment.

Clause 56 prevents Council from being bound by the Instrument. Notwithstanding, it is generally accepted that restrictions on title of this nature can have a positive impact in achieving a desired end state. However, where development is both permissible and considered to be a positive planning outcome, the restriction may be dispensed through determination of an application.

In this instance, the proposed development is not considered to be a good planning outcome and insufficient justification is provided for dispensing with the restriction.

North Coast Regional Environmental Plan 1988

Clause 32B – Coastal Lands

Clause 32B requires that Council takes into account the *NSW Coastal Policy 1997*, the *Coastline Management Manual* and the *North Coast: Design Guidelines*.

The proposed development is of a relatively minor scale and situated far enough from the foreshore to ensure minimal impact on the natural environment, natural processes, aesthetic qualities, cultural heritage and ESD principles. The proposal will not impose shadow on beaches or impede access to public foreshore.

Clause 43 – Residential Development

Clause 43 requires that Council shall not consent to development for residential purposes unless it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land.

The proposed subdivision is consistent with the permissible residential density for the relevant Tweed Shire zone.

State Environmental Planning Policies

State Environmental Planning Policy NO. 71 – Coastal Protection

The subject site falls within the coastal zone as identified under SEPP 71, however referral to the Department of the Natural Resources is not necessary given the relatively minor nature of the proposal and its distance from any sensitive coastal locations.

Clause 8 of the policy remains relevant to assessment. This clause relates to the potential impacts of the development on public access to the foreshore, views, overshadowing, existing wildlife corridors, the suitability of the site for the development and measures to reduce other adverse environmental impacts. Having regard to the nature of the proposal, its distance from any waterway or foreshore and the similar intensity and scale of surrounding developments, it is considered that the proposal is consistent with the matters in Clause 8.

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

There are no relevant Draft Environmental Planning Instruments

(a) (iii) Development Control Plan

Section A1 - Multi Dwelling Housing

The proposal has been assessed against Section A1 - Multi-Dwelling Housing and areas of non – compliance are outlined below.

Site Planning and Layout

The purpose of this design element are best summarised in Performance Criteria P1 – P4 as follows:

- P1. The site layout takes into account on-site features, eg. topography, orientation, views and vegetation.*
- P2. The site layout integrates with the surrounding environment through:*
- *buildings facing streets and public open spaces with their entries visible;*
 - *buildings, streetscapes and landscape design relating to the site topography and to the surrounding neighbourhood character;*
 - *visual links to views or features of significance are created or maintained;*
 - *dwellings are sited and designed to maximise solar access to living areas and open space areas;*
 - *minimising the extent to which driveways and garages dominate the appearance of the development; and*
 - *providing adequate pedestrian, cycle and vehicle links to street and open space networks.*

It is not considered that the proposed development adequately meets Performance Criteria P1 and P2 above, for the following reasons:

- There is no visible entry to the dwelling from the street;
- Design does not respond to topography; and
- Siting and design does not allow for preferred solar access to living areas and public open space.

Streetscape, Building Appearance and Front Setbacks

The purpose of this design element is outlined in the Performance Criteria below:

In established areas

- P1. The scale of new development is compatible with and sympathetic to the scale and bulk of existing development in the locality, particularly on the perimeter of the development site, or where that locality or development site has some heritage significance or distinctive character.*
- P2. In areas subject to redevelopment, new development is compatible with the desired future character of the locality.*

With regard to P1 and P2, the applicant was requested to provide further information demonstrating that the proposed new dwelling is consistent with the streetscape character of the surrounding low density residential development. A street elevation was provided in response to this request, which demonstrates the new dwelling will be of a similar bulk, height and spacing to those adjoining the site. It is noted that the sloping site (away from the road) reduces the visual impact of the dwelling on the streetscape as the ground floor of the building is located below the road level.

Notwithstanding, the submitted street elevation does not include the existing dwelling, which together with the proposed dwelling will result in increased built form altering the character of the area. Insufficient information has been provided to determine if the streetscape character will be detrimentally altered.

Performance Criteria 6 of this design element also requires the frontage of the building and its entries to address the street. As stated previously, the proposal does not allow for a visible entry to the street and there has been insufficient justification provided in this regard.

Building Siting and Design

Performance Criteria P2 requires that:

“buildings are sited and designed to provide adequate daylight to habitable rooms and winter sunlight to ground level open space.”

It is not considered that the proposal meets this requirement as discussed further below.

Views, Visual and Acoustic Privacy

Performance Criteria P5 requires that site layout and building design protect internal living and sleeping areas from uncontrollable high levels of external noise.

The proposal does not allow for sufficient line of sight separation between parking areas and shared driveways from bedroom windows. Bedroom 3 on the lower level is located on the shared driveway. Privacy screening is proposed on the south facing window, although no screening is proposed on the east facing window. With regard to amenity and acoustic privacy, it is not considered acceptable to allow bedrooms on the ground floor, directly adjacent to the shared access and car parking space. The proposal does not meet Performance Criteria P5 in this regard.

Usable Open Space

Performance Criteria P1 – P5 outline the intent for private open space as follows:

- P1. Open space is clearly defined to distinguish between communal and private open space.*
- P2. Open space areas are of dimensions to suit the projected requirements of the dwelling occupants, and to accommodate some outdoor recreational needs as well as providing space for service functions.*
- P3. Part of the private open space is capable of serving as an extension of the function of the dwelling for relaxation, dining, entertainment, recreation and children's' play, and is accessible from a main living area of the dwelling.*
- P4. Open space is located to take advantage of outlook and natural features of the site, take account of the impact of adjoining dwellings on privacy and overshadowing.*
- P5. Orientation of the open space helps to achieve comfortable year round use including the provision of shaded areas*

The quantity of private open space required is approximately 300m². The proposal meets this requirement through provision of approximately 100m² (on the southern boundary for the proposed dwelling) and approximately 200m² at the rear of the site (for the existing dwelling).

A deck area of approximately 20m² is also proposed at on the western side of the proposed dwelling. The deck area is accessed from the lounge / living area.

It is not considered that the proposed private open space area meets the Performance Criteria above. Apart from the deck, the private open space area on the southern boundary is not accessible and unlikely to be used given it is separated from the dwelling by the shared driveway and a retaining wall.

Orientation of all open space areas are undesirable (located on the western side and the southern side) and are not likely to be comfortable all year round (as required by P5).

Compliance with the above criteria is not achieved with regard to poor solar access, topography constraints and limited accessibility.

Stormwater Management

Performance criteria associated with this issue require consideration of on-site stormwater management systems including:

- downstream capacity and the need for on-site stormwater detention and re-use;
- scope for on-site infiltration of water;
- minimisation of detrimental impacts on existing water balance and quality;
- sustainability and maintenance needs of the stormwater system;
- safety of pedestrians and vehicles and
- emergency spillways and / or overland flow paths.

Council Officers requested the applicant provide confirmation (by hydraulic calculation) the catchment and volume of stormwater intended to be detained on-site, as well as details on how the gravel trench proposed adjacent to the northern boundary is intended to be maintained and what precautions are available during overtopping or failure. The applicant was also requested to confirm that the existing stormwater pipe system within the western boundary easement can convey any overflow from the gravel trench and roof water tank in times of failure.

The applicant responded with stormwater drainage plans and calculations prepared by Tweed Coast Consulting Engineering Pty Ltd. The submitted detail has addressed stormwater conveyance for the proposed dwelling under a minor rain event but has not addressed Council's concerns of the capacity of the existing inter-allotment drain, or how the overall development intends to manage Q100 events such that there is no net increase in runoff to downstream properties.

Council's Engineer considers that the submitted detail does not address the concerns raised by Council in the Information Request or relevant Performance Criteria in this regard.

Section A2 – Site Access and Parking Code

The applicant has proposed 4 car parking spaces meeting the required amount.

Council requested that the applicant provide vehicle turning templates to show how a standard vehicle can enter and exist the proposed car parks in a forward direction (in accordance to A2.3.7).

The submitted response was found to be unacceptable by Council's Engineer, who has indicated that vehicles can only enter and exit the site by utilising a 3-point turn.

Section A12 - Dual Occupancy Controls

The proposal complies with the requirements of this section. It has an area exceeding 900m², it is of regular shape and is located within an existing residential area with access to public transport routes, parks and open spaces and shops.

Section A14 – Cut and Fill on Residential Land

A building platform has already been constructed on-site.

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

The proposal complies with the Government Coastal Policy.

No demolition or change of use is proposed.

(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

Context Setting

The surrounding development is predominately characterised by 1 and 2 storey detached dwellings on either side of Castlecrag Avenue. Given the local topography, dwellings on the western side of Castlecrag Avenue are low set, whilst dwellings on the eastern side of the street are higher and characterised with retaining walls.

In isolation, the proposed detached dual occupancy will result in a similar scale, height and spacing to that of surrounding dwellings. However, combined with the existing dwelling on-site, it is likely there will be some impact on the streetscape. Insufficient information has been provided to determine the extent of the impact on the streetscape.

Residential Amenity and Design

The site layout and proposed design does not provide suitable amenity for future residents of the detached dual occupancy. The bedrooms on the lower level are unlikely to have sufficient access to light (given the adjoining retaining wall and have insufficient separation from the adjoining car space and shared access way.

Furthermore, the location of proposed car parks for both the existing dwelling and the proposed dwelling are located within close proximity to the proposed dwelling, resulting in reduced privacy and amenity for occupants.

It is considered that alternative design solutions could allow for:

- balconies / open space on the eastern side,
- alternative location for car parks for both dwellings,
- more visible entry to the street, and
- improved amenity for bedrooms on the ground floor.

(c) Suitability of the site for the development

Topography

It is considered that whilst the site is constrained somewhat by slope, there is opportunity to provide for a more slope sensitive design.

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

Council received 6 submissions objecting to the proposal during the public notification period.

Concerns raised by submitters are outlined below, followed by a response from Council Officers.

Character / Streetscape

Submitters are concerned that the proposal is inconsistent with existing development in the surrounds and will impact upon the existing streetscape.

Response

As identified above, the information submitted by the applicant would indicate that the proposed new duplex will be of a similar bulk and height to surrounding development. However there is insufficient information to determine the full impact of the proposal on the streetscape given the elevation does not include the existing dwelling.

Traffic

There is concern that the proposal will create additional traffic and the location of the access on the crest of the hill will result in safety issues.

Response

It is considered that the additional traffic likely to be generated is minor. The slope of the street has not prevented the establishment of access to all existing dwellings within the street. Council's Engineer is of the view that the site is likely to have adequate site distance.

Medium Density

There is concern that the proposal will result in medium density development. It is claimed that the proposed dwelling can be converted into a duplex development.

Response

Should the detached dual occupancy be approved, the development is required to comply with the consent. This concern would be a matter for compliance.

Views / Daylight

The submitters are concerned that the proposed dwelling will impact on neighbouring properties access to light and views from the adjoining dwelling. The adjoining development currently enjoys views across the site through a large window adjacent to the proposed dwelling.

Response

In regard to views, the proposed dwelling will impact on views in a south west direction from the property to the north. These views are currently enjoyed because the existing dwelling is located almost 30 metres from the site frontage. Considering that views are taken from the side boundary and zoning allows for built development, it is considered unrealistic to retain side boundary views in this instance.

In regards to daylight, the application does not adequately demonstrate that the proposal allows for daylight setbacks around existing windows. The window of the adjoining dwelling to the north is approximately 5 metres from the proposed northern wall. The length of the northern wall is approximately 8.5 metres, exceeding the preferred length of 5 metres.

Insufficient information has been provided to conclude that the length of northern wall will not reduce daylight to the adjoining dwelling.

With regard to privacy, the applicant argues that privacy of the adjoining dwelling to the north is protected as the sill height of windows (on the second level) facing north are at a height of approximately 1.8 metres, limiting views. Further, screening is proposed on the northern side of the deck to ensure privacy of the adjoining dwelling. Windows on the first level will be predominately screened by the retaining wall.

Geotechnical Issues

There is concern that the proposed cut will result in land slip.

Response

It is considered that the design of footings would be assessed in detail prior to Construction Certificate, should the proposal be approved.

Car Parking

It is considered that there is a lack of car parking on-site.

Response

Proposed car parking is in accordance with the DCP requirements.

Stormwater

Submitters are concerned that existing inter-lot stormwater pipe is not sufficient to service the new dwelling as it is damaged. Submitters are concerned with the lack of information in relation to stormwater connection to the existing pipe system and consider that a new drainage line to the pit in Darlington Drive is required.

Response

The applicant has failed to demonstrate that stormwater will be adequately managed as suggested by the submitter.

(e) Public interest

The proposed development is not considered to be in the public interest given it will result in limited amenity for future residents.

OPTIONS:

1. Refuse the matter in accordance with the grounds articulated in the report.
2. Defer the matter to allow for further assessment and detail in relation to acoustic assessment, design and stormwater management.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has a right of appeal in the NSW Land and Environment Court should they be dissatisfied with the determination of the application.



POLICY IMPLICATIONS:

The proposed development has been assessed on its merits and does not generate a policy implication for Council.

CONCLUSION:

Council has received an application for a detached dwelling on part of a site currently improved with a dwelling, creating a detached dual occupancy dwelling.

The proposal has been assessed against the Council's LEP and DCP and is recommended for refusal given that it does not comply with Performance Criteria in section A1 and A2 of Council's DCP relating to stormwater, provision of private open space and access.

The Council received six submissions in response to the development. It is noted that some of the matters raised by submitters have not been adequately addressed in the application.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).

Nil.

P9 [PR-PC] DA06/0682.05 for an Amendment to Development Consent DA06/0682 for Recreation Establishment Comprising of Meditation Centre, Accommodation Wings for Up to 20 Guests, Administration, Dining & Kitchen Facilities, Bathroom Amenities, Car Parking, Sp

ORIGIN:

Development Assessment

FILE NO: DA06/0682 Pt2

SUMMARY OF REPORT:

Council at its meeting of 31 July 2007 resolved to defer the report to allow further clarification on notification letters to submitters, which apparently included inaccurate information about the number of events originally approved.

It is noted that the notification letters issued by Council for the proposed modification incorrectly advised residents that the original approval allowed for 9 retreat events and the proposed modification would therefore be significantly higher (proposed 19 per year). The original approval actually allows for 18 retreat events per year, therefore the proposed modification only allows for an increase of one event.

Notwithstanding the submitters to the original development application were provided with a copy of the Council report which included the conditions of consent outlining the correct number of approved retreat events.

Council has received a section 96 application to amend an approved development consent for a recreational establishment (meditation centre and associated accommodation and facilities) at 128 Bonnydoon Road, Uki (Lot 93 DP807666).

There are three components to the proposed modification as follows:

1. Increase in the number of meditation retreat events per year, but with less number of operational days overall.
2. Provision for individual ensuites in each bedroom within the accommodation blocks (as apposed to shared bathrooms and toilets); and
3. Creation of an awning over the entrance to the administration building.

The section 96 modification has been referred to Council's Environmental Health Officer for assessment in relation treatment of effluent and to Council's Traffic Engineer in relation to potential traffic impacts.



Council's Traffic Engineer has noted that whilst the number of proposed retreat events has increased by one per year, there is a net decrease in traffic generation from the development (when averaged over a twelve month period), as the total number of retreat days has been decreased.

Furthermore, Council's Environmental Health Officer has indicated the on-site sewage treatment and disposal method previously approved for the meditation retreat is sufficient for treatment of effluent from the additional bathrooms proposed in the accommodation buildings and will not significantly increase the hydraulic loading.

With regard to the above, the proposed amendments are considered relatively minor and are unlikely to result in any unacceptable impacts on traffic and the environment.

Whilst the submitters have raised concerns in relation to impacts on amenity from traffic generated by the proposal, this matter was considered with the original proposal and conditions were imposed to address these concerns. Given the minor nature of the modifications, it is not considered impacts on amenity will be increased in this regard.

RECOMMENDATION:

That: -

- A. Section 96 application DA06/0682.05 for an amendment to Development Consent DA06/0682 for a recreation establishment comprising of meditation centre, accommodation wings for up to twenty guests, administration, dining and kitchen facilities, bathroom amenities, car parking, spa and massage facilities at Lot 93 DP 807666, No. 128 Bonnydoon Road, Uki be amended as follows: -**

- **Condition No 2 which currently reads:**

The development shall be completed in accordance with the Statement of Environmental Effects and the Plan No's 1 - 13 prepared by John Robinson Design and Drafting Services and dated February 2006; drawing No. 01956 Rev. B Sheets 1 & 2 prepared by B & P Surveys and dated 3 February 2006, except where varied by the conditions of this consent.

Shall be deleted and a new Condition 2A to be inserted as follows:

2A The development shall be completed in accordance with the Statement of Environmental Effects and the following plans, except where varied by the conditions of this consent.

- **Plan No's 1 – 5, 7- 8, 10, 12 & 13, dated February 2006 2007 prepared by John Robinson Design and Drafting Services;**
- **Plan No 09A, dated May 2007 prepared by John Robinson Design and Drafting Services;**
- **Plan No 6, received 9 July 2007, titled 'Reception Side Entry Way Amendment', prepared by John Robinson Design and Drafting Services; and drawing No. 01956 Rev. B Sheets 1 & 2 prepared by B & P Surveys and dated 3 February 2006.**

- **Condition 19 which currently reads:**

19. The erection of a building in accordance with a development consent must not be commenced until:

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and**
- (b) the person having the benefit of the development consent has:**
 - (i) appointed a principal certifying authority for the building work, and**
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and**
- (c) the principal certifying authority has, no later than 2 days before the building work commences:**
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and**
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and**
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:**

- (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and*
- (ii) notified the principal certifying authority of any such appointment, and*
- (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.*

Shall be deleted and condition 19A shall be inserted as follows:

19A. The erection of a building or any modifications to a building, in accordance with a development consent must not be commenced until:

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and*
- (b) the person having the benefit of the development consent has:*
 - (i) appointed a principal certifying authority for the building work, and*
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and*
- (c) the principal certifying authority has, no later than 2 days before the building work commences:*
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and*
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and*
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:*
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and*
 - (ii) notified the principal certifying authority of any such appointment, and*



(iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

- **Condition 70 which currently reads:**

No intensification of use of the retreat beyond the provision of six 10-day and twelve 3-day meditation retreats per year is permitted without the approval of the General Manager or his delegate.

Shall be deleted and a new condition 70A to be inserted which reads:

70A *No intensification of use of the retreat beyond the provision of; four 10 day retreats, six 5 day retreat; two 3 day retreats, and seven 2 day retreats are permitted without the approval of the General Manager or his delegate.*

- B.** The Terms of Restriction on Use referred to in the 88E instrument be amended to reflect the modifications, prior to the commencement of the use.



REPORT:

Applicant: Slocomb Investments Pty Ltd
Owner: Slocomb Investments Pty Ltd
Location: Lo 93 DP 807666, No. 128 Bonnydoon Road Uki
Zoning: 1(a) Rural and 7(d) Environmental Protection

BACKGROUND:

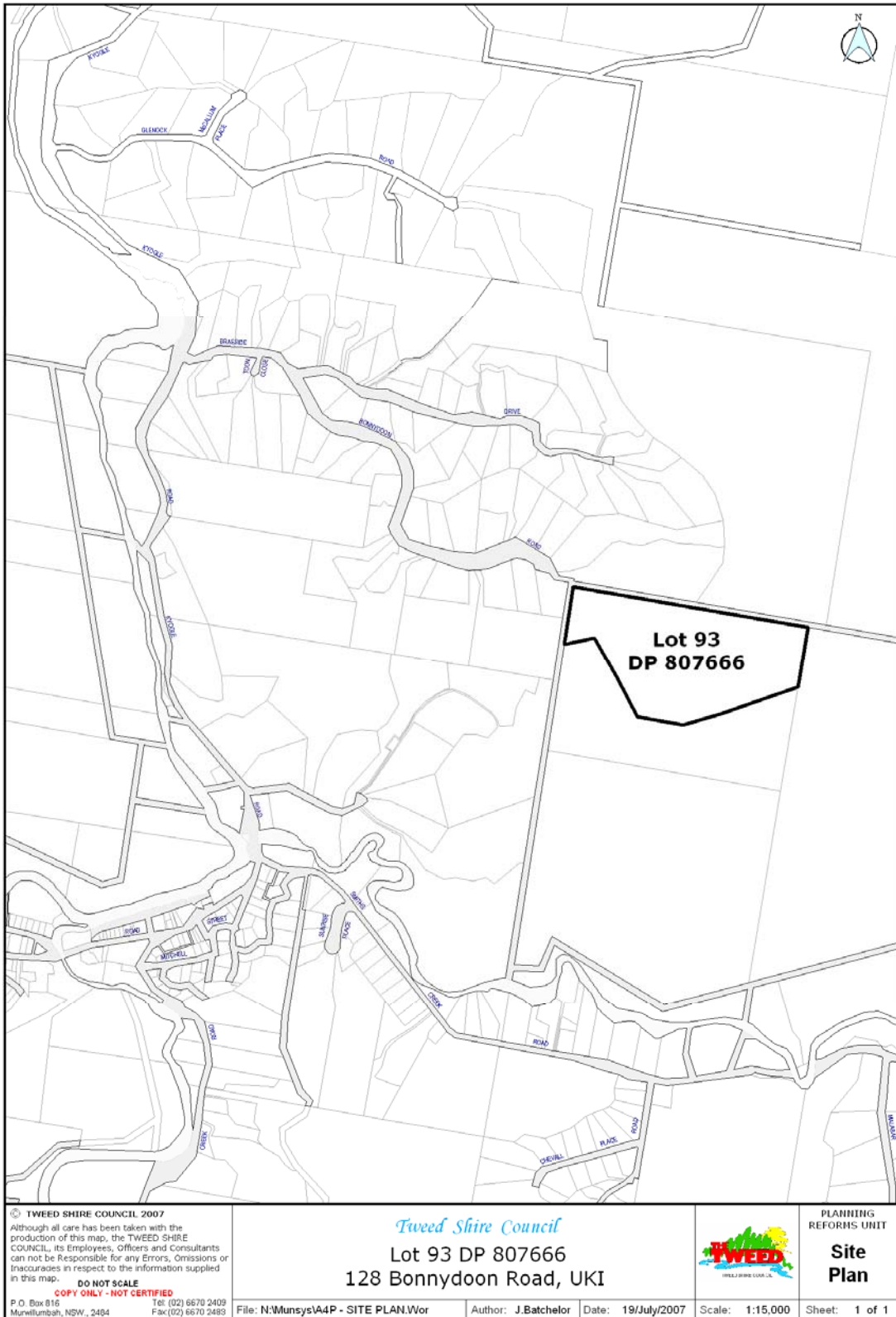
Council at its meeting of 28 November 2006, resolved to approve a development application for a recreational establishment comprised of a meditation centre, accommodation wings for up to 20 guests, administration, dining, kitchen facilities, bathroom amenities, car parking, spa and massage facilities at the abovementioned address.

The Development Consent imposes conditions on the use, limiting:

- The use of kitchen facilities' for guests only;
- The use of the accommodation wings for sleeping facilities' and bathroom amenities for guests; and
- Provision of six 10- day and twelve 3-day retreats per year.

The Development Consent also limits the number of guests in attendance to 20, at any one time and does not allow for the premises to be used for private parties, functions, conferences and the like.

SITE DIAGRAM:





PROPOSAL:

The following modifications are requested through the subject section 96 modification.

Condition 70 - Retreats

Condition 70 currently reads as follow:

No intensification of use of the retreat beyond the provision of six 10-day and twelve 3-day meditation retreats per year is permitted without the approval of the General Manager or his delegate.

The existing conditions allows for use of the site as a retreat, for a total of 96 days per year.

The applicant is seeking to modify this condition to allow for the following shorter-stay retreats.

- Four x 10- day retreats;
- Six x 5- day retreats;
- Two x 3- -day retreats; and
- Seven x 2- -day retreats.

This will result in use of the site as a retreat for a total of 90 days.

It is noted that in determining the original application, Council resolved that the uses be limited through a Section 88 Covenant as follows:

"The Development Application DA06/0682 be limited to the uses in the present application and that Council be satisfied either through notification on terms satisfactory to Council on the Section 149 Certificate for the property and/or through entering into a Section 88B covenant to be entered into prior to the issuing of a Construction Certificate."

Council has provided a 13RPa form and attached terms of restrictions for the applicant to proceed with an 88E covenant to the Lands Title Office. These terms include the frequency and length of retreat stays outlined in condition 70. Should Council resolve to approve the proposed modification, the terms of restrictions will need to be amended.

Condition 2 – Amended Floor Plan Accommodation Units

The applicant has requested that accommodation Blocks A and B are amended internally to allow for individual toilet and shower facilities within each room.

The existing Development Consent approves floor plans for block A and B (referenced in Condition 2) which allows for 10 rooms in each block with shared female and male toilets (comprised of 4 toilets, and 4 showers in each block).

Whilst the proposed modification will result in additional bathroom facilities in each block, the footprint of each accommodation block is not proposed to be expanded.

Condition 2 – Extended Awning Over Administration Building

The applicant has proposed an extension to the administration building, comprised of an awning over the entrance to the building. The amendments will require modification to elevation plans referred to in Condition 2.

The extended awning is proposed to protrude 3 metres from the existing roof structure, for a length of 5 metres.



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 original proposal was considered to be compliant with the objectives of the Rural 1(a) zone and related clauses.

The proposed amendments to the administration and the accommodation buildings do not impact on the approved height of the proposal, which was compliant with Clause 16 of the LEP.

Clause 15 of the Tweed Local Environmental Plan (TLEP) requires that Council is satisfied that the subject land has sufficient services, including disposal of sewage and drainage.

Council's Environmental Health Officer has reviewed the proposed modification and confirmed that the approved on-site sewage management system is sufficient for the proposed amendments and does not require modification.

North Coast Regional Environmental Plan 1988

Clause 12 of the North Coast Regional Environmental Plan is relevant to the application as it relates to potential for loss of prime crop or pasture land.

The original assessment did not anticipate impacts on prime crop or pasture land and the proposed modification does not include increased building envelopes and will not create additional impacts.

State Environmental Planning Policies

There are no State environmental Planning Policies that are applicable to the modification.

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

There are no draft planning instruments that affect the proposal.

(a) (iii) Consolidated Development Control Plan (DCP)

Section A2 – Site Access and Parking Code

The proposed modification does not increase demand for car parking as no additional accommodation, staff or gross floor area is proposed.

Section A11 – Public Notification of Development Proposals

The section 96 (1a) modification was notified and Council received a total of 9 submissions and one petition with 45 signatures.

(a) (iv) Any Matters Prescribed by the RegulationsClause 92(a) Government Coastal Policy

The land is not subject to the provisions of the Coastal Policy.

Clause 92(b) Applications for Demolition

The proposed modification does not involve the demolition of any buildings or structures.

(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 localityTraffic and Amenity

The proposed modifications allow for an additional retreat event per annum but a less amount of operational days per year.

The proposed modification was referred to Council's Traffic engineer, who provided the following comments.

The proposed amendment to the original DA alters the traffic generation as follows:

Previously approved trip generation:

Total number of 'retreats'	= 18 (96 days total)
Customers: 13 weeks x 50 trips/week	= 700 trips per year
Staff 8 x2 x 96 days	= 1,536 trips/year
AADT = (1536 + 700) / 365	= 6.2 vpd

Proposed amended trip generation:

Total number of 'retreats'	= 19 (90 days total)
Customers: 12 weeks x 50 trips/week	= 650 trips per year
Staff: 8 x2 x 90 days	= 1,440 trips/year
AADT = (1,440 + 650) / 365	= 5.7 vpd

*Therefore, even though the number of retreats has increased by one, there is a net decrease in traffic generation from the development **when averaged over a twelve month period** as the total number of retreat days has been decreased.*

*Even if we assume the worst scenario of traffic generation (i.e. one customer per vehicle which would be very unlikely), we obtain 20 customer vehicle trips (inbound only) plus one return excursion per customer per day (say 40 vehicle trips) plus 16 staff vehicle trips (inbound and outbound) plus 2 service vehicle trips = 78 vpd **on any given 'worst' day**. This worst scenario would have been the same for the original development application. Table D1.11 of "Tweed Shire Development Specification D1 - Road Design" states that a Class C rural road can typically carry up to 1,000vpd. The cumulative impact of the proposal together with pre-development traffic volume is well below this threshold. Even if we consider the additional retreat per year as purely **adding** additional customer generated traffic to that previously accepted, the increase in traffic is trivial (40 customer trips plus 4 service vehicle trips over a whole year).*

The applicant's description of the trips generated by the proposal being similar to that of a residential dwelling is not relevant.

The traffic problem as perceived by the residents is possibly one of more frequent traffic noise and increased safety risk from a slight increase in traffic volume. These factors would have been considered from a planning perspective at the time of the original application.

As the proposed amendment provides typically the same order of trips generated as the original proposal, the S. 96 amendment should be accepted in terms of traffic impact. Condition 70 provides a limit to traffic generation from the development and should be retained in amended form to suit the S. 96 amendment.

On balance, and with regard to the points below, it is considered that the proposed modifications will not have an unacceptable impact on traffic and associated amenity:

- Council's Traffic Engineer has concluded that the traffic generated by the proposed amendment is within the same order of trips as the original proposal.
- Impacts perceived by the residents due to noise and safety risk were considered during the original assessment and it was concluded that the recreational establishment will be consistent with the intended amenity and character of the Rural zone.
- Condition 59 of the original approval requires provision of traffic safety and warning signs at appropriate locations along Bonnydoon Road. This condition was imposed to address submitters concerns and reduce potential impact on amenity through vehicle noise and or inappropriate speed on Bonnydoon Road. This condition will remain unchanged.

Effluent Disposal

The proposed modifications include the provision of additional bathrooms and toilets in each accommodation block. The proposal has been assessed by Council's Environmental Health Officer (EHO) who considers that the modifications will not increase the hydraulic loading to the on-site sewage management system.

The on-site management system has been approved through a Section 68 Approval and Council's EHO has advised that approved system is sufficient for the additional facilities proposed.

(c) Suitability of the site for the development

The site was found to be suitable and consistent with the relevant statutory guidelines in the original assessment.

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

Council received 13 submissions during the public notification of the original application. Issues raised by submitters related to land use, traffic impact, children safety, amenity, environmental impacts, ground water supply, drainage and precedent. These matters were assessed in the original report to Council.

As stated above, the proposed section 96 modification was notified and Council received 9 submissions as well as a petition.

It is noted that many submitters raised issues which were considered during assessment of the original application, such as land use, precedent and environmental impacts. These matters are noted but have not been addressed here as they were considered as part of the original assessment and do not relate to the proposed modifications.

It is noted that the Notification letters issued by Council incorrectly advised residents that the modifications would result in an increase from 9 approved retreat events to 19 per year. The approval actually allows for 18 retreat events per year, resulting in an increase of one event. The modification is therefore considered to be relatively minor and traffic generated will be within the same order of trips (slightly less) than the approved development. The modification is therefore considered acceptable as it will not result in any additional traffic impacts.



Traffic

Submitters raise concerns with impacts of increased traffic from the proposed modification.

Comment

As identified above, the proposed amendments to the number of retreats per year will result in:

- less number of operational days each year;
- one additional retreat per year;
- a net decrease in traffic generation when averaged over twelve months; and
- traffic generation which is well below the volume capacity of a Class C rural road.

The proposal approval allows for an increase of one event per year and the modification is therefore considered to be relatively minor and traffic generated will be within the same order of trips (slightly less) than the approved development. The modification is therefore considered acceptable as it will not result in any additional traffic impacts.

Residential Amenity – Road Safety and Traffic Noise

Submissions raise concerns with safety for residents due to increased traffic as well as noise generated from increased use of Bonnydoon Road.

Comment

Impacts upon residential amenity were assessed as part of the original application. It was considered that the proposal was consistent with the intended character of the rural area in which the property is located. It was also noted that recreational establishments are permissible by the Rural 1(a) zoning and contemplated as an acceptable land use.

The increased scale of operation proposed by the section 96 modification is minor and will result in one additional retreat per year. Existing conditions imposed on the use are considered sufficient to alleviate concerns about safety and amenity.

Increased Amenities

There is concern that the inclusion of en-suites in the accommodation units indicates the intention of the developer is for an “upmarket tourist resort” as opposed to basic needs of the meditation retreat.

There are concerns that the increased number of bathrooms will require greater water and production of effluent.

Comment

It is not considered that the provision of bathrooms in each room will result in a larger scale development. The building footprint of the accommodation block will not be increasing and the use will not be intensified by the increased number of bathrooms. The existing Development Consent limits the scale and use of the development.

Council's Environmental Health Officer is satisfied that the approved on-site effluent disposal system can cater for the increased facilities.

(e) Public interest

The proposed development was considered to demonstrate consistency with the relevant planning instruments and Council requirements when originally considered. The proposed amendments do not result in any non compliance and does not result in significant changes to the nature and intensity of the approved recreational establishment.

OPTIONS:

1. Approve the s96 application in accordance with the recommended conditions of consent.
2. Refuse the s96 application for stated reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicants be dissatisfied with the determination, they have a right to appeal to the NSW Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The section 96 modifications are considered relatively minor and will not result in any increased traffic impacts.

The proposed amendments have been assessed on their merits and within the context of the variation only. The section 96 modification is not an opportunity to re-visit the original determination.



PLANNING COMMITTEE MEETING DATE: TUESDAY 21 AUGUST 2007

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

P10 [PR-PC] Development Application DA06/1092 for a Cat Boarding Establishment at Lot 1 DP 581658, No. 275 Burringbar Road, Burringbar

ORIGIN:

Development Assessment

FILE NO: DA06/1092 Pt1

SUMMARY OF REPORT:

Council has received a Development Application for the establishment of a pet boarding facility, catering for cats only. The proposal involves construction of an 87 metres squared cattery building including 17 cat enclosures, a reception/office area, storeroom, workshop and car parking facilities. The pet boarding establishment would be managed and operated by the owners/occupiers of the property.

Council considered a similar Development Application in Binalong Court at its meeting of 15 August 2006 and approved the proposal subject to a limited consent for only 2 years of operation of the facility after the Occupation Certificate, and then for continued operation of the facility after this period a Section 96 Application would need to be submitted for the continued operation of the facility at which time Council could consider the development's suitability.

This subject Development Application was notified for a period of fourteen (14) days in which two submissions were received that have been considered further in this report. The main issues of concern of this proposal include, noise and odour impacts, effluent disposal, access and traffic, operational impacts and cumulative impacts.

After an assessment of the submissions and issues raised and assessment of the Development Application it is recommended that the proposal be approved subject to recommended conditions of consent. It is also recommended that the consent be limited to an operating period of two (2) years from the date of the Final Occupation Certificate issued for the building, after which time any extension of the facilities operation will require an approval under a Section 96 Application. This will provide Council with an opportunity to further assess the level of acceptability of the development and its suitability to the locality.

The assessment of the proposal against the relevant planning instruments has not identified any areas of non-compliance that would warrant refusal of the proposal. The application is therefore recommended for conditional approval.



RECOMMENDATION:

That Development Application DA06/1092 for a cat boarding establishment at Lot 1 DP 581658, No. 275 Burringbar Road, Burringbar be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Detail of Cat Cages prepared by Creagh Handley and dated 4 May 2007, Sheets 2-4 of 5 prepared by Creagh Handley and dated 19 September 2006 and Sheets 5-7 of 7 prepared by Creagh Handley and dated 24 January 2007, except where varied by the conditions of this consent.
[GEN0005]
2. This consent is limited to a period of two (2) years from the date of the Final Occupation Certificate of the building. If the cat boarding facility is to operate beyond this two (2) year period a Section 96 Application will need to be submitted to Council at least two (2) months prior to the expiry of the two (2) year period.
[GENNS02]
3. Advertising structures/signs to be the subject of a separate development application (where statutorily required).
[GEN0065]
4. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
[GEN0115]
5. Cats shall be kept within the enclosed boarding area at all times and shall not be permitted to roam.
6. The cat boarding area shall be provided with a hand wash basin with warm water to the satisfaction of the General Manager or his delegate.
7. External walls to the cat boarding area (not including reception area) shall be of solid masonry construction. All internal wall surfaces within the cat boarding area shall be impervious, solid, washable materials. Wall and floor junctions shall be sealed to facilitate cleaning and disinfection.
8. Not more than 25 cats shall be boarded or kept at the premise at any time.
9. All solid waste from pens, including manure, solid litter and soiled bedding, shall be removed from pens on a daily basis. This material shall be stored and disposed to the satisfaction of the General Manager or his delegate and shall not be directed to the OSSMF. Waste materials shall be disposed of off site by way of an approved waste collection and disposal service not less than once per week unless an alternative has been approved in writing by the General Manager of his delegate.

10. Wastes shall be stored in a suitable container with a tight fitting lid and suitably bagged prior to placement in the bin.
11. The cleaning of pens shall be a dry process and shall not be permitted to generate large volumes of waste water. This process shall be carried out to the satisfaction of the General Manager or his delegate.
12. All animal foods shall be stored in a dry and healthy state, free from vermin. The premise, including animal sleeping areas, shall be maintained in a healthy condition and free from vermin and odour.
13. A hand basin provided with warm water shall be provided within the cat boarding work area.
[GENNS01]
14. The keeping (including the micro-chipping and registration) of other domestic animals on the property shall be done so in accordance with the Companion Animals act 1998 and Local Government Act 1993.
[GENNS03]
15. The installation of the wastewater treatment system for the wash-down wastewater from the cattery shall be in accordance with the Interbuild Pty Ltd Cattery Wash-down Wastewater Design Plan prepared by Ian Simpson and dated 4 May 2007.
[GENNS04]
16. The on-site sewerage management system is not to be utilised for treatment or disposal of cat faecal matter or urine.
[GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

17. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT.

These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.



A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

- (a) Tweed Road Contribution Plan: \$3,063
S94 Plan No. 4 (Version 4.0)
Sector11_4

[PCC0215]

18. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all footings and slabs, including a certificate of sufficiency of design prior to the determination of a construction certificate.

[PCC0935]

19. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0945]

20. A construction certificate application for works that involve any of the following:-

- connection of a private stormwater drain to a public stormwater drain
- installation of stormwater quality control devices
- erosion and sediment control works

Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

Where Council is requested to issue a construction certificate for civil works associated with this consent, the abovementioned works can be incorporated as part of the cc application, to enable one single approval to be issued. Separate approval under section 68 of the LG Act will then NOT be required.

[PCC1145]

21. An application shall be lodged and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage or drainage works prior to the issue of a construction certificate.

[PCC1195]

PRIOR TO COMMENCEMENT OF WORK

22. The erection of a building in accordance with a development consent must not be commenced until:

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and

- (b) the person having the benefit of the development consent has:

 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:

 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:

 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.
- [PCW0215]*
23. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.
- [PCW0225]*
24. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.



25. Prior to the commencement of building work, a certificate signed by a registered professional engineer is to be submitted to the Principal Certifying Authority to certify that adequate consolidation of foundation material has been achieved to support the proposed structure.

[PCW0755]

26. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area where required to the satisfaction of the Principal Certifying Authority.

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

This sign is to remain in position for the duration of the project.

[PCW0985]

27. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.

[PCW1005]

DURING CONSTRUCTION

28. The provision of 3 off street car parking spaces including parking for the disabled where applicable. The layout and construction standards to be in accordance with Tweed Shire Council Development Control Plan, Part A2 - Site Access and Parking Code, the Building Code of Australia, AS2890 and sheet No. 7 prepared by Creagh Handley and dated 24 January 2007.

[DUR0085]

29. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

30. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

31. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of the buildings with direct line of sight to the proposed building.

[DUR0245]

32. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

33. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0395]

34. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

35. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.

[DUR0415]

36. The finished floor level of the building should finish not less than 225mm above finished ground level.

[DUR0445]



37. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan, Part A5 - Subdivision Manual and Development Control Plan, Part A14 - Cut and Fill on Residential Land to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

38. All work associated with this approval is to be carried out so as not to impact on neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -

- Noise, water or air pollution
- Minimise impact from dust during filling operations and also from construction vehicles
- No material is removed from the site by wind

[DUR1005]

39. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

[DUR1025]

40. All proposed building pads are to be filled to a minimum 500mm above the Q100 design flood level of RL 36.6m AHD, including provision for any localised overland flow.

[DUR1375]

41. The proponent must not undertake any work within the public road reserve without giving Council's Engineering & Operations Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

[DUR1845]

42. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

43. The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act.

[DUR1885]

44. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.

[DUR1945]

45. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.

[DUR2185]

46. Appropriate measures are to be put in place during the construction and/or demolition period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.

[DUR2405]

47. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

48. **Plumbing**

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR2495]

49. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[DUR2545]

50. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- * 50⁰C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]



51. House drainage lines affected by the proposal are to be relocated to Council's satisfaction. Prior to the relocation of any plumbing and drainage lines, a plumbing permit and the relevant plumbing permit fee is to be submitted to Council. Inspection of drainage works prior to covering is required

[DUR2565]

52. The proposed cattery building shall have a minimum habitable floor level of RL 37.1m AHD.

[DURNS01]

53. Provision of adequate vehicular access in accordance with Council's "Access to property" pamphlet, including the following specific work:

- Bitumen sealing of accesses from the road carriageway in Upper Burringbar Road to the proposed visitor car parking. Construction and sealing of the proposed car parking spaces in accordance with sheet No. 7 prepared by Creagh Handley and dated 24 January 2007 is also required.

[DURNS02]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

54. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

55. Prior to the occupation of any building and prior to the issue of any occupation certificate a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility.

[POC1035]

56. It is a condition of this consent to operate a system of sewage management that this clause is complied with.

- (a) The sewage management facilities used in the operation of the system must be maintained in a sanitary condition and must be operated in accordance with the relevant requirements of this Regulation.
- (b) A sewage management facility used in the operation of the system must not discharge into any watercourse or onto any land other than its related effluent application area.
- (c) The conditions (if any) of any certificate of accreditation issued by the Director-General of the Department of Health under this Division in respect of the plans or designs for any components of the sewage management facilities must be complied with.

- (d) The person operating the system of sewage management must provide details of the way in which it is operated, and evidence of compliance with the relevant requirements of this Regulation and of the conditions of the approval, whenever the Council reasonably requires the person to do so.

[USE1445]

USE

57. 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, odours or the like.

[USE0125]

58. Except as may be expressly provided in a licence approval under the Protection of the Environment Operations Act 1997 (POEO) Act, the licence holder must comply with section 120 of the POEO Act 1997 prohibiting the pollution of waters.

[USE0155]

59. All wastes shall be collected, stored and disposed to the satisfaction of the General Manager or his delegate.

[USE0875]

60. The premises shall be maintained in a clean and tidy manner.

[USE0965]

61. Offensive noise shall not be caused or permitted to be emitted from the premise. Noise shall not be audible within any habitable premise between 9pm and 7am (night), and shall not exceed background levels by more than 5dB(A) between 7am and 9pm (day).

62. The pet boarding facility shall be constructed and operated in accordance with the Animal Welfare Code of Practice No. 5, Care and Management of Dogs and Cats in Boarding Establishments (NSW Agriculture, October 1996).

63. The cattery shall be adequately ventilated and shall not be permitted to impact the amenity of any premise by way of odour.

64. The facility shall not be used for the commercial keeping of dogs nor shall it be used for any other dog related services such as dog grooming, boarding or dog washing.

65. The pick up and drop off of cats shall be restricted to 8.30am to 4.30pm Monday to Saturday and 1.30pm to 4.30pm on Sundays and public holidays.

[USENS01]



CONDITIONS IN ACCORDANCE WITH SECTION 79BA OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 FROM THE NSW RURAL FIRE SERVICE

1. The property around the cat house to a distance of 20 metres or the boundary if less, shall be maintained as an 'Inner Protection Area' (IPA) as outlined within section 4.2.2 in Planning for Bushfire Protection 2001.
2. In recognition that no reticulated water supply exists, a 5,000 litre dedicated water supply tank shall be provided. A 65mm storz fitting and ball or gate valve shall be installed in the tank.

REPORT:

Applicant: Mr CD Handley and Mrs CE Handley
Owner: Mr CD Handley and Mrs CE Handley
Location: Lot 1 DP 581658 No. 275 Burringbar Road, Burringbar
Zoning: 1(a) Rural
Cost: \$40,000

BACKGROUND:

Council has received a Development Application for a proposed pet boarding facility, catering for cats only at Lot 1 DP 581658 275 Burringbar Road, Burringbar. The proposal involves construction of an 87 metres squared cattery building including 17 cat enclosures, a reception/office area, storeroom, workshop and car parking facilities. The property contains an area of 90910 metres squared and has an established dwelling and other infrastructure located on the property.

The proposed facility would operate 24 hours per day and is proposed to house a maximum of 25 cats. Pick up and drop off of cats would be restricted to 8.30am to 4.30pm Monday to Saturday and 1.30pm to 4.30pm on Sundays and public holidays. These proposed hours appear reasonable and a condition will be recommended limiting the pick up and drop off of cats to between these hours.

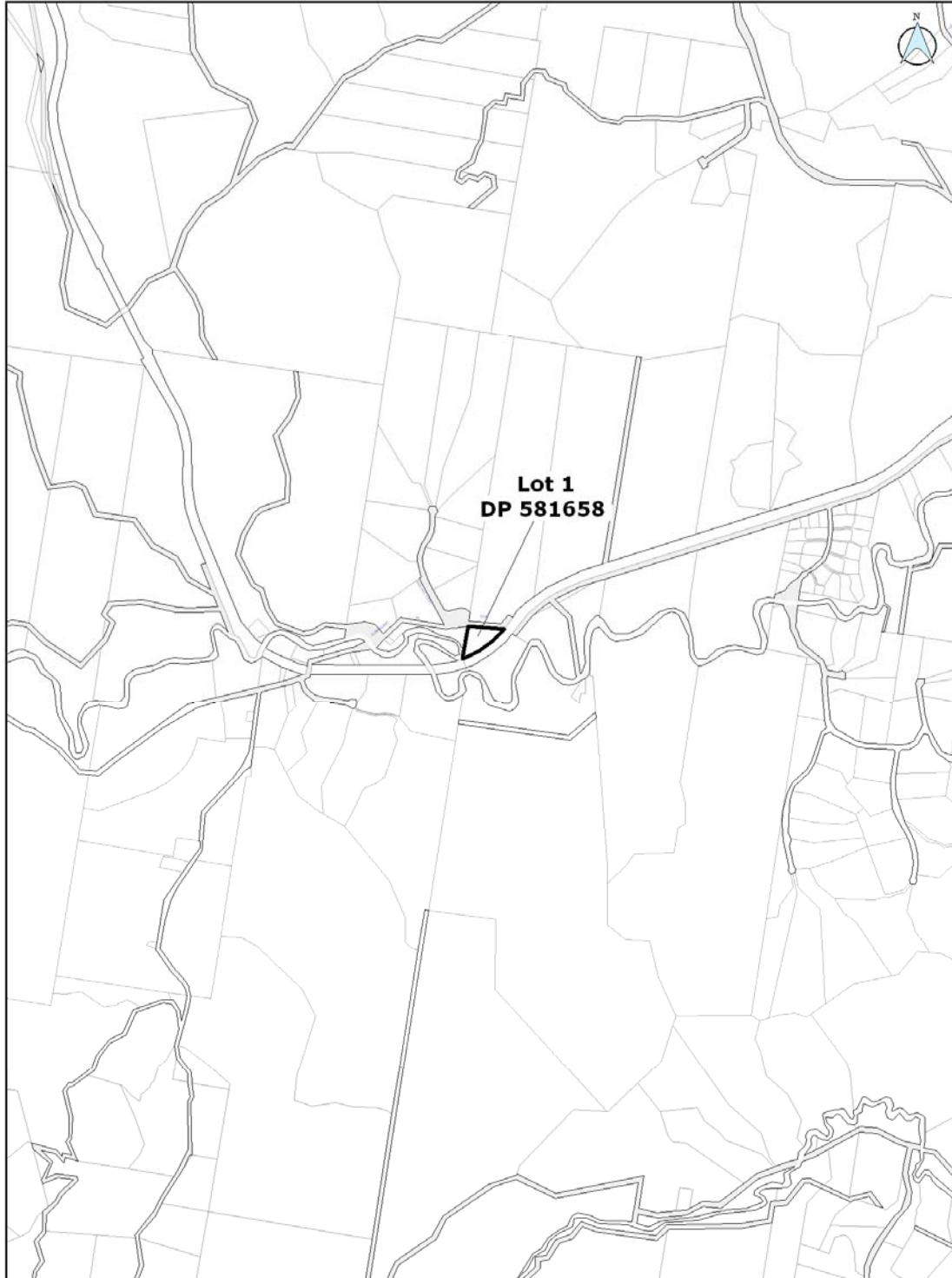
There are currently no established boarding facilities for cats within the locality. The closest facilities are at Clothiers Creek and Dulguigan to the north and Alstonville and Lismore to the south. Council has approved a cattery at 8 Binalong Court, Upper Burringbar for up to 52 cats under Development Application 05/1225 that is yet to be established.


The owners of the facility if approved will have to be mindful of their obligations under the Companion Animals Act 1998, the Local Government Act 1993 and their compliance with any conditions of consent issued under the Environmental Planning & Assessment Act, 1979 in the Notice of Determination. Council will be able to monitor the facilities operations and ensure compliance with any conditions of consent and the relevant Acts.

Council required additional information twice from the applicant to be submitted to Council for assessment in which it has all be supplied and now deemed to be satisfied and as such the Development Application is now recommended for approval subject to conditions of development consent.



SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2007 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2493</p>	<p><i>Tweed Shire Council</i> Lot 1 DP 581658 No. 275 Burringbar Road, Burringbar</p>		<p>PLANNING REFORMS UNIT Site Plan</p>
<p>File: N:\Munsys\A4P - SITE PLAN.Wor</p>		<p>Author: B. Ingram</p>	<p>Date: 14/Aug/2007</p>
<p>Scale: 1:20,000</p>		<p>Sheet: 1 of 1</p>	

ELEVATION PLANS:

NORTHEAST ELEVATION

NORTH WEST ELEVATION

SOUTH EAST ELEVATION

SOUTH WEST ELEVATION

scale 1:100

scale 1:100

PROPOSED CATTERY AT CARLOW GROVE, UPPER BURRINGBAR ROAD BURRINGBAR FOR C.D. & C.E. HANDLEY N3 SHEET 30F5 47006 DESIGN C.D. HANDLEY
19 September 2006



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 subject site is zoned 1(a) Rural under the Tweed Local Environmental Plan 2000 and the proposed use is defined as an 'animal establishment' and is permissible with consent.

The objectives of the 1(a) Zone are:

Primary Objectives:

- To enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development.
- To protect rural character and amenity.

Secondary Objective:

- To enable other types of development that rely on the rural or natural values of the land such as agri and eco-tourism.
- To provide for development that is not suitable in or near urban areas.
- To prevent the unnecessary fragmentation of development of land which may be needed for long-term urban expansion.
- To provide non-urban breaks between settlements to give a physical and community identity to each settlement.

Clause 15 of the Tweed LEP 2000

Clause 15 of the Tweed LEP 2000 relates to the availability of essential services to the proposed development. Water would be supplied by roof water collection tanks. Effluent disposal and waste are addressed later on in this report.

Clause 39A of the Tweed LEP 2000

The proposed development is partly located in a bushfire prone area as identified on Council's GIS System. As such the Development Application was referred to the NSW Rural Fire Service on 4 October 2006 in accordance with Section 79BA of the Environmental Planning & Assessment Act 1979. Based upon an assessment of the plans and documentation received for the proposal, the NSW Rural Fire Service, in respect to bush fire matters, provided the advice that the development should have the following conditions imposed that have been included as recommended conditions of consent:

1. The property around the cat house to a distance of 20 metres or the boundary if less, shall be maintained as an 'Inner Protection Area' (IPA) as outlined within section 4.2.2 in Planning for Bushfire Protection 2001.
2. In recognition that no reticulated water supply exists, a 5,000 litre dedicated water supply tank shall be provided. A 65mm storz fitting and ball or gate valve shall be installed in the tank.

North Coast Regional Environmental Plan 1988

Clause 12 of the North Coast Regional Environmental Plan 1988 is applicable to the Development Application. Clause 12 requires Council to consider the potential impact of development on agricultural activities and whether the development will cause a loss of prime agricultural land. In this regard the following assessment has been made:

- The site is classified as Class 4 by NSW Agriculture and as such is not prime crop or pasture land.
- The land to the west and north is used for rural living purposes and the land to the east and south is used for grazing and rural living purposes.
- The type of development proposed would not be sensitive to the agricultural pursuits, which are undertaken in the locality.
- The development would not adversely affect surrounding agricultural land.

State Environmental Planning Policies

No State Environmental Planning Policies are applicable to the proposed development.

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

No Draft Environmental Planning Instruments are applicable to the Development Application.

(a) (iii) Tweed Consolidated Plan

The following parts of the consolidated Plan are applicable to the Development Application.

A2 - Site Access & Parking Code

The applicant is proposing the provision of three (3) additional car parking spaces for the development, including one (1) disability car park. The Plan does not provide any specific off-street car parking provisions for animal establishments. An analysis of comparative rates for other developments has revealed that this number of car parks should adequately service the proposed development.

The applicant will be required to construct the car parks to a bitumen sealed standard. Tweed Road Contributions Plan No. 4 is also applicable to the proposed development. Internal vehicular manoeuvring can be satisfactorily provided on site.

A4 – Advertising Signs Code

The Development Application does not propose the erection of any signage within the subject land. As such, any consent will be conditioned that separate approval is obtained for any proposed signage.

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

Satisfactory.

(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 and Odour

Noise generated by the proposed cattery was a concern. Council's Environment and Health Services Unit has considered the potential noise impacts on adjoining property owners. The Unit has recommended conditions of consent to limit any potential noise and odour impacts.

Concern may arise that the facility may be used to house dogs or carry out other dog related services such as grooming or washing. Dogs have a greater potential to create noise disturbances. Part 6 of the applicant's submitted Statement of Environmental Effects states that the application does not include the keeping of dogs and as such a condition will be recommended to ensure that the premises shall not be used for the commercial keeping of dogs nor shall it be used for any other dog related services such as dog grooming, boarding or dog washing.

Provided adequate provision is made for waste disposal, food storage and ventilation of the cattery, then objectionable odour is not anticipated.

Effluent Disposal and Waste Treatment

The applicant has indicated that it is proposed to remove cat manure, soiled litter and soiled bedding from the enclosures on a daily basis. The solid waste is to be bagged and placed in a screw lid bin daily and removed off site approximately once per week. The applicant has confirmed that a commercial contractor will be utilised for this waste collection and the manure is to be removed from the pens at least once daily in accordance with the Animal Welfare Code of Practice No. 5 "The care and management of cats in animal boarding establishments" by NSW Agriculture. No soiled waste produced from the proposed cattery facility will be treated on-site by the on-site sewerage management facility.

The applicant has submitted a design for the treatment of the wash-down wastewater from the cattery building. It is considered that the proposed wastewater and disposal method option for the cattery building to be constructed at the property as detailed in the Interbuild Pty Ltd Cattery Wash-down Wastewater Design Plan is sufficient to attain an acceptable level of environmental impact within the allotment boundaries. A recommended condition of consent will be that the installation of the wastewater treatment system for the wash-down wastewater from the Cattery shall be in accordance with the Interbuild Pty Ltd Cattery Wash-down Wastewater Design Plan.

(c) Suitability of the site for the development

Context and Setting

In the context of local visual amenity and setting, the proposal would have minimal impact. No major earthworks or modifications to the landscape are necessary to implement the proposal. The development would be compatible with the visual character and amenity of the locality. The use of the facility for a pet boarding establishment catering for cats only will need to be fully compliant with the recommended conditions of consent to ensure that the facility has limited impacts on adjoining properties. Given that the facility is to house cats only, the physical separation distances to other dwellings appear to be adequate to prevent any unreasonable amenity impacts.

Due to the nature of the use and limiting the facility to boarding cats only, there should be limited noise impacts associated with the proposed development. Certain conditions of consent will be imposed concerning noise to ensure that no adverse impacts will be caused. The construction materials proposed would further mitigate any noise impacts on surrounding properties.

Traffic Access

Council's Engineering Development Assessment Department has assessed the proposal. Before a final recommendation was to be provided the applicant was requested to submit additional information relating to traffic matters and other issues. The further information required was and related to:



1. A site plan clearly identifying the access point, alignment of the access way to the parking area, access grades, width of the access and surface treatment is required.
2. The applicant must reassess and provide to Council revised figures for the volume of traffic that the development will generate.
3. The subject allotment shares a common boundary with a local creek. The application does not provide any technical assessment regarding flooding impacts and the applicant was required to provide this information.
4. The site plan showing the proposed car parking area is unsatisfactory. The car parking layout does not comply with AS 2890 Part 1. The applicant was required to submit a revised site plan showing the proposed car parking layout in compliance with AS 2890 Part 1.

The applicant did provide the further information requests and the information submitted adequately addresses the above issues.

Vehicular access to the proposed development is via an existing 3.5 metre wide gravel access from Upper Burringbar Road. An inspection and assessment of the proposal has revealed that adequate Approach Sight Distance is available at the intersection of Upper Burringbar Road and the access to the proposed development,

The applicant originally calculated an average daily trip generation rate of 1.96 vehicles per day. This figure was well below the expected traffic generation for a similar development. The daily trip generation rate of 1.96 vehicles per day is below what would be expected and is not acceptable to Council. The applicant was therefore given the opportunity to reassess the expected traffic generated by this development and advise Council accordingly. The applicant had revised the traffic generated by the development as 2.24 vehicles per day and is acceptable to Council.

Flooding

The subject allotment shares a common boundary with a local creek. Council's Infrastructure and Planning Unit has been able to provide estimated Design Flood Levels and minimum habitable floor levels with these being Design Flood Level 36.6m AHD and minimal habitable floor levels being 37.1m AHD. As such the proposed building must have a floor level above RL 37.1m AHD and a recommended condition of consent will be imposed to this effect.

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

The Development Application was notified for a period of fourteen (14) days between Wednesday 4 October 2006 and Wednesday 18 October 2006 in accordance with Council's former Development Control Plan No 42 – Public Notification Policy. During the notification period a total of two (2) submissions were received.

The main issues raised in the submissions received are outlined below and a response to them is then considered.

Issue	Comment
Noise impacts on adjoining property owners.	Given that the facility is to house cats only, the physical separation distances to other dwellings appear to be adequate to prevent any unreasonable amenity impacts. Council's Environment and Health Services Unit has considered the proposal and the likely noise impacts and has recommended conditions for the development consent.
Effluent Disposal.	The proposed cattery facility would utilise the services of a Waste Contractor to remove all solid waste from the cattery. This service would be on a weekly basis and a specifically labelled container would be provided by the waste collection service for this purpose. The approved on site sewerage treatment system currently on the property will not receive any solid cat waste and a condition of consent will be recommended to ensure that the on site sewerage management system is not to be utilised for the treatment of disposal of cat faecal matter or urine.

<p>Amenity, appropriateness, cumulative impact and rural character.</p>	<p>A submission was received indicating that the proposed development was not appropriate so close to an already approved site for a cattery and that the proposed facility would adversely affect the quiet rural amenity of the area. The zoning of the land is 1(a) Rural under the Tweed Local Environmental Plan 2000 and the proposal is defined as an 'animal establishment' that is permissible with development consent. It has been demonstrated that the applicant has addressed the main issues and as such the proposal does not warrant refusal on the basis that it will adversely affect the rural character of the area or have a cumulative impact upon the locality. By Council imposing a 2 year operational period on the development allows it the opportunity to assess the operational details of the cattery and determine whether or not the facility should cease operation or continue beyond the 2 year period. This ensures protection is given to the immediate property owners to ensure the facility is fully compliant with any conditions imposed on the development consent.</p>
<p>Proposal to have negative impacts on property values.</p>	<p>It is speculation to say that the proposal such as this would create an adverse effect on real estate prices for adjacent lots and as such Council cannot consider this issue.</p>

The Development Application was also referred to the Australian Rail Track Corporation LTD for comment and review given the close location of the proposed development to the Burringbar Railway Line. The Australian Rail Track Corporation LTD (ARTC) responded with "In this instance ARTC does not have any comments to make with regards to the proposed DA".

(e) Public interest

Having consideration to the matters raised in this report it can be concluded that on a merit assessment the proposed development is not contrary to the public interest and with a 2 year operational period initially it will allow Council to further assess the appropriateness of the development and consider whether or not the development should continue or cease after that 2 year period.

OPTIONS:

1. Approve the Development Application subject to appropriate conditions.
2. Refuse the Development Application with appropriate reasons for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should Council Resolve to approve the application in line with Option No.1 there will be no direct impact upon Council's budget or forward estimates. Should Council resolve not to approve the application legal costs will be incurred should the applicant appeal the decision in the NSW Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed development has attracted some public objection, as discussed, but it is considered that the reasons for objection do not warrant refusal or modification of the Development Application. Any consent will be conditioned to ensure that the facility is operated properly so that nearby residents and the amenity of the area is not adversely affected.

It is also recommended that the consent be limited to an operating period of two (2) years from the date of the Final Occupation Certificate issued for the building, after which time any extension of the use of the building as a cattery will require an approval under a Section 96 Application. This will provide Council with an opportunity to further assess the level of acceptability of the development. The ongoing use of the facility beyond two (2) years of the date of the Final Occupation Certificate for the building will also be dependant upon the facilities operation and compliance with the conditions of consent issued.

The proposal has been thoroughly investigated and is considered to be suitable to the site. It is unlikely to cause any significant negative impacts to the surrounding built and natural environment and meets all of Council's applicable requirements within the Tweed Local Environmental Plan 2000 and relevant Tweed Consolidated Plan. The proposal is therefore considered to warrant conditional approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).

Nil.



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P11 [PR-PC] Development Application DA07/0204 for an Electricity Substation at Lot 2 DP 615053 & Part Kirkwood Road adjacent to Lot 2, No. 39 Sunshine Avenue, Tweed Heads South

ORIGIN:

Development Assessment

FILE NO: DA07/0204 Pt2

SUMMARY OF REPORT:

Council is in receipt of an application for a new 66/11kV electricity substation at the existing Country Energy Depot site, 39 Sunshine Avenue, Tweed Heads South. The development comprises of a proposed switchyard and control building in the south western portion of the site.

The land is zoned 5(a) Special Uses (Electricity) under the Tweed LEP 2000. The proposed development, being a Public Utility Undertaking, is permissible with consent in the 5(a) zone.

The application raises issues such as: noise and visual impact; loss of existing significant vegetation; Electric and Magnetic Field (EMF) health concerns; as well as site suitability issues. A total of 65 written submissions have been received against the proposed substation.

RECOMMENDATION:

That Development Application DA07/0204 for an electricity substation at Lot 2 DP 615053 and Part Kirkwood Road adjacent to Lot 2, No. 39 Sunshine Avenue Tweed Heads South 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:**
 - DA-01 Site Plan prepared by Brewster Murray and dated February 2007;**
 - DA-02 Floor Plan prepared by Brewster Murray and dated February 2007;**
 - DA-03 Elevations prepared by Brewster Murray and dated February 2007;**
 - DA04 Sections prepared by Brewster Murray and dated February 2007; and**



- **0054634.SC 01 (Rev A1) – Landscape Concept Plan prepared by ERM and dated 24 January 2007,**
except where varied by the conditions of this consent.

[GEN0005]
- 2. **The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**

[GEN0115]
- 3. **Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.**

[GEN0135]
- 4. **The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory.**
- 5. **Prior to the occupation or use of any building, a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.**

[GENNS01]
- 6. **A Plan of Management is required for purposes of on-site habitat compensation to ensure the long-term management of the area for ecological purposes. The plan is to:**
 - (a) **Ensure that plantings are locally endemic species consistent with the Swamp Sclerophyll EEC to be replaced (at a rate of 3:1);**
 - (b) **Provide detail on the methods and timelines used to rehabilitate and maintain the site; and**
 - (c) **Provide a monitoring and reporting protocol.**

A copy of the Plan of Management is to be provided to Tweed Shire Council within 3 months of commencement of works.
- 7. **A report is to be provided to Tweed Shire Council on the progress of the habitat compensation, twelve (12) months after the initial plantings are in place.**

[GENNS02]
- 8. **The proposed development shall be undertaken in accordance with the Licence Agreement and the Deed of Agreement to Exchange between Tweed Shire Council and Country Energy dated 23 May 2007.**
- 9. **The proponent shall in accordance with the Licence Agreement and Agreement to Exchange between Tweed Shire Council and Country Energy:**
 - (a) **Dedicate the proposed drainage reserve, 10m wide along the full length of the western boundary at no cost to Council.**
 - (b) **upon Tweed Shire Council completing the transfer of the proposed road closure parcel, Country Energy shall consolidate the parcel with Lot 2 DP 615053.**

- (c) Submit an accurate plan of the proposed drainage reserve to Council 60 days prior to registration to allow the land to be classified.

[GENNS03]

PRIOR TO COMMENCEMENT OF WORK

10. Civil work in accordance with a development consent must not be commenced until a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications.

[PCW0815]

11. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area where required.

[PCW0985]

12. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

13. All works shall be carried out in accordance with the Country Energy Procedure CEP2033 Management of Acid Sulfate Soils dated 3 February 2004.

[PCWNS01]

14. The minimum floor level for the development is 2.6m AHD. Site filling and associated drainage is to be designed to address drainage on the site as well as existing stormwater flows onto or through the site, and minimizing the impact of filing on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

15. Works that involve any of the following:-

- connection of a private stormwater drain to a public stormwater drain
- installation of stormwater quality control devices
- erosion and sediment control works

are subject to an application to be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

16. Erosion and Sediment Control shall be provided in accordance with the following:

- (a) The S68 Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.



- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCWNS02]

17. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

The following Section 64 Contributions are to be paid prior to the commencement of works. Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water DSP4:	0.2338 ET @ \$9997	\$2,337
Sewer Banora:	0.2338 ET @ \$4804	\$1,123

A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an Accredited Certifier.

[PCWNS03]

DURING CONSTRUCTION

18. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

19. The roof cladding is to have low reflectivity where it would otherwise cause nuisance to the occupants of the buildings with direct line of sight to the proposed building.

[DUR0245]

20. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia.

[DUR0375]

21. **Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.**

[DUR0395]

22. **It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.**

[DUR0415]

23. **The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.**

[DUR0815]

24. **The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense.**

[DUR0995]

25. **All work associated with this approval is to be carried out so as not to impact on neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -**

- **Noise, water or air pollution**
- **Minimise impact from dust during filling operations and also from construction vehicles**
- **No material is removed from the site by wind**

[DUR1005]

26. **The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited.**

[DUR1015]

27. **Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans and Plan of Management for on-site habitat compensation.**

[DUR1045]

28. **Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications prior to any use or occupation of the buildings.**

[DUR1875]

29. **The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.**

[DUR2185]



30. Appropriate arrangements shall be provided for the storage and removal of garbage and other waste materials.

[DUR2205]

31. Hazardous or industrial waste must be stored and disposed of in a manner to minimise its impact on the environment including appropriate segregation for storage and separate disposal by a waste transporter licensed by the NSW Department of Environment and Climate Change.

[DUR2215]

32. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

[DUR2375]

33. Appropriate measures are to be put in place during the construction and/or demolition period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.

[DUR2405]

34. If dewatering operations are carried out on-site, the applicant shall contact Council's Building and Environmental Health Unit to ascertain any Council water discharge requirements.

[DUR2425]

35. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

36. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR2495]



37. **Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.**

[DUR2545]

38. **A 3.0m masonry fence or similar shall be constructed on the western and southern boundaries of the switchyard in accordance with the Tweed Heads South Substation (Lot 2 DP 615053) Site Plan (DA-01) prepared by Brewster Murray dated February 2007 prior to substation operations commencing.**

[DURNS03]

USE

39. **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, odours or the like.**

[USE0125]

40. **All externally mounted artificial lighting, including security lighting, is to be shielded where necessary so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.**

[USE0225]

41. **All mechanical plant and equipment shall be acoustically treated so as to avoid the creation of offensive or intrusive noise to any occupant of neighbouring or adjacent premises.**

[USE0235]

42. **A Post Construction Noise Impact report from a suitably qualified acoustic consultant shall be prepared and submitted for consideration by Council's General Manager or delegate in respect to noise actually generated by the plant and activities associated with the electricity substation.**

The assessment report shall include any recommended noise amelioration measures to be carried out by the applicant. The report shall be submitted within a period not exceeding 30 days of the date of operation of the electricity substation.

The applicant shall commence the carrying of any such recommendations as provided within the noise assessment report within 30 days from the date of the acoustic assessment.

[USE0295]

43. **All hazardous and/or dangerous goods shall be stored in accordance with requirements of WorkCover NSW.**

[USE1035]

44. **The disposal of all wash water, oil, grease or other pollutants from the business shall be disposed of in a manner so as to protect the environment.**

[USE1055]



45. A post construction report measuring electric and magnetic field levels generated by the electricity substation prepared by a suitably qualified consultant shall be submitted for consideration by Council's General Manager or delegate in respect to potential impacts upon neighbouring and adjacent premises to the plant and equipment associated with the electricity substation. This report must consider the National Health and Medical Research Council's Interim Guidelines on limits of exposure to 50/60Hz electric and magnetic fields.

The assessment report shall include any recommended amelioration measures to be carried out by the applicant. The report shall be submitted within a period not exceeding 30 days of the date of operation of the electricity substation.

The applicant shall commence the carrying out of any such recommendations as provided within the assessment report within 30 days from the date of the assessment.

[USENS01]

REPORT:

Applicant: Environmental Resources Management Australia
Owner: Country Energy
Location: Lot 2 DP 615053, No. 39 Sunshine Avenue, Tweed Heads South
Zoning: 5(a) Special Uses (Electricity)
Cost: \$1,000,000

BACKGROUND:

Council is in receipt of a development application that seeks consent to construct an electricity substation in the south western corner of the subject site. The proposal is designed to cater for the future electricity needs of the Tweed.

The property is described as Lot 2 DP615053, 39 Sunshine Avenue, Tweed Heads South and has a total site area of 3.23ha. The site is rectangular in shape and has a gentle slope towards the south and west. Existing improvements comprise of several brick and colourbond buildings associated with the current Country Energy Depot. Existing vegetation is scattered over the site, with quite dense vegetation in the south western portion.

The immediate locality surrounding the subject site incorporates: the Tweed Billabong Holiday Park immediately to the west; residential dwellings to the north (beyond the existing works depot and office buildings); and the Lindisfarne Anglican School to the East (across Sunshine Avenue).

The site has frontage to Sunshine Avenue to the east and the Kirkwood Road reserve to the south. Council has previously negotiated an exchange of land with Country Energy, where part of the unformed Kirkwood Road reserve (approximately 1900m²) was granted to Country Energy for part of their land (Lot 2) of an equivalent area along the western boundary of Lot 2, to provide for a stormwater drainage reserve. This portion of Lot 2 is currently used for stormwater drainage, but as yet is not dedicated for such purposes.

Council has prepared a concept plan for the future extension of Kirkwood Road, with the subject land being demonstrated as surplus to Council's requirements. The land exchange will be effective by the closure of the portion of road reserve. Subsequent to the transfer of the road closure parcel, Country Energy will consolidate the two parcels of land and create the 10m wide portion of land on the western boundary as a drainage reserve. Council approved the land exchange on 6 March 2007, with both parties exchanging Deeds of Agreement for exchange of land and a Licence Agreement (for the use of Kirkwood Road until the land is transferred) on 23 May 2007. Council has commenced procedures for the road closure (which may take up to 2 years to complete). Subsequently, Country Energy has incorporated the portion of Kirkwood Road in their development application for the electricity substation.



The Proposal

The proposed 66/11kV substation incorporates the following:

- Site preparation, including earthworks, fencing and vegetation removal (approximately 0.64ha);
- Construction of an access driveway and on-site vehicle manoeuvring areas;
- Construction of a building to contain both the store, control room and switchroom;
- Installation of water connections and connection to Council sewer and stormwater system;
- Installation of associated electrical infrastructure such as transformers and capacitor banks; and landscaping works.

The electrical infrastructure includes:

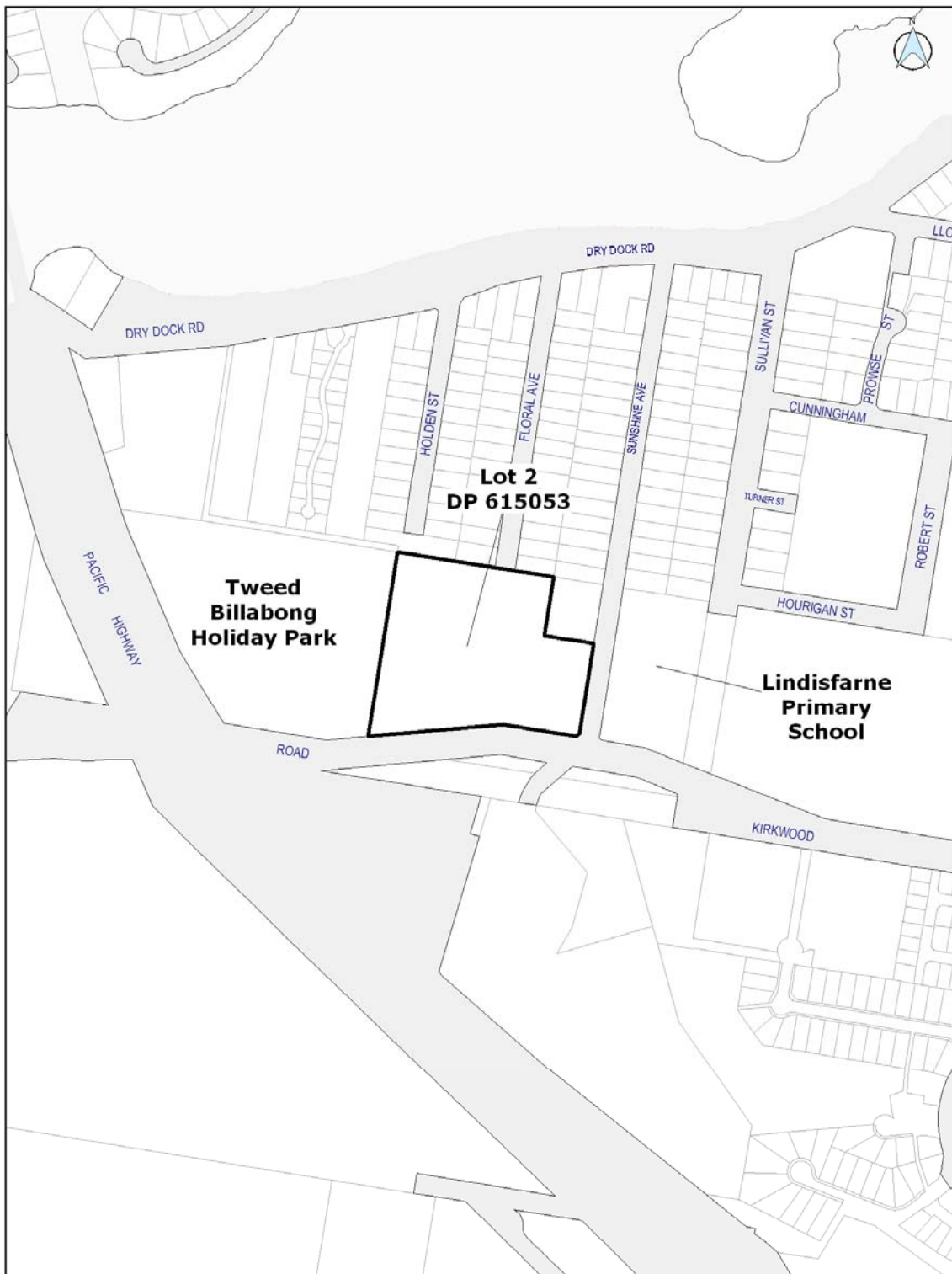
- Two 66kV feeders from the existing 66kV sub-transmission line;
- Two transformer bays containing 66/11kV 20/30MVA transformers;
- A 4.5MVA 11kV capacitor bank;
- Busbars, 66kV switches and other miscellaneous plant; and
- An oil collection tank.


The proposal also incorporates the laying of approximately 10 underground 11kV conduits to the site boundary for future distribution feeder cable installation.

Landscaping and tree planting works are proposed within the subject site to limit potential visual impacts of the substation and rehabilitate an area of endangered Swamp Sclerophyll vegetation. Landscaping works will utilise locally endemic species and include:

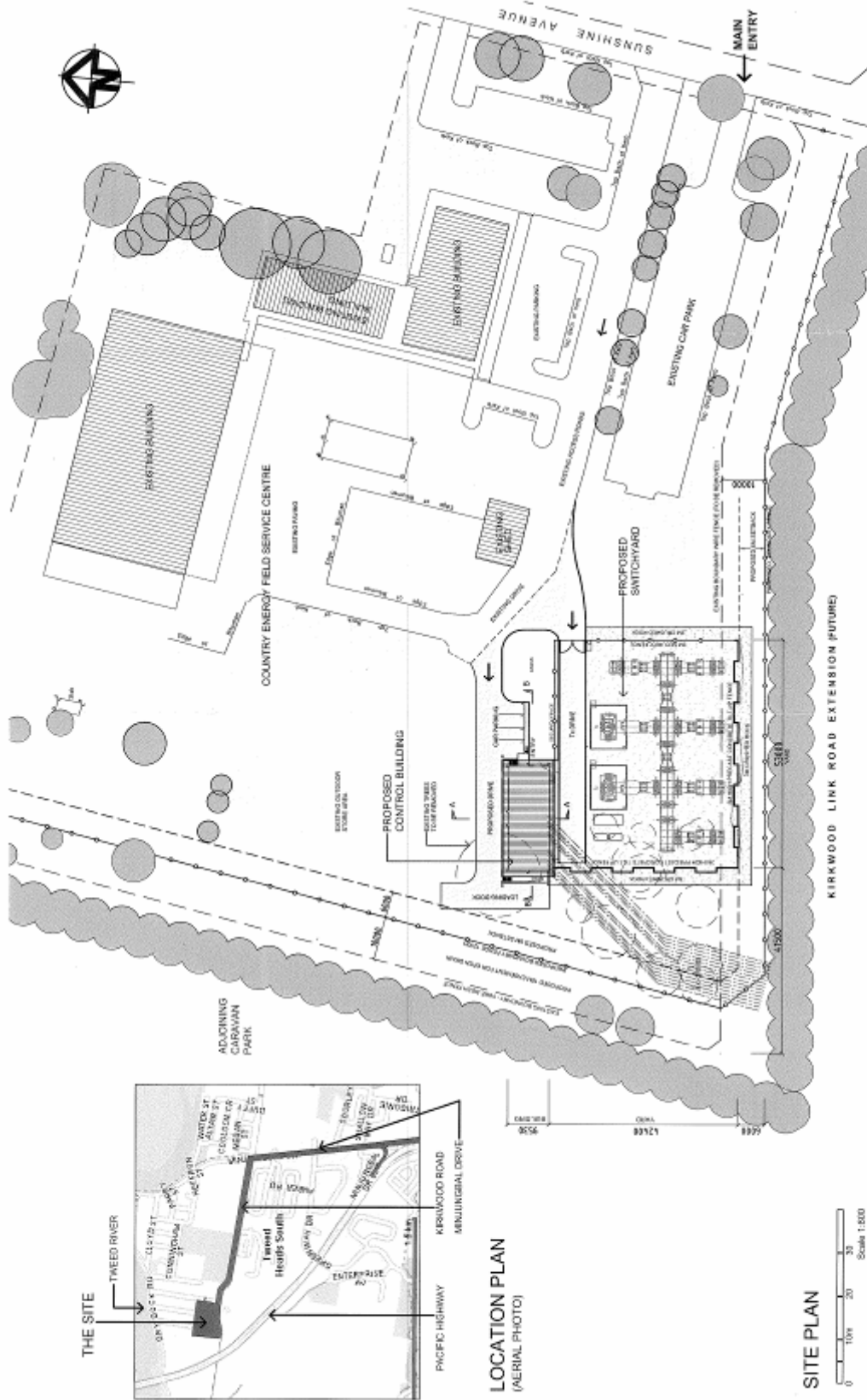
- Replanting of areas around the compound that are disturbed by earthworks for the substation pad and conduits (0.115ha);
- Rehabilitation of retained Swamp Sclerophyll vegetation along the new southern boundary of the site (0.125ha); and
- Ongoing weed control within the site.

SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2007 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2493</p>	<p><i>Tweed Shire Council</i> Lot 2 DP 615053 No. 39 Sunshine Avenue, Tweed Heads South</p>		<p>PLANNING REFORMS UNIT Site Plan File: N:\Munsys\A4P - SITE PLAN.Wor Author: B. Ingram Date: 15/Aug/2007 Scale: 1:5,000 Sheet: 1 of 1</p>
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DEVELOPMENT PLANS:



TWEED HEADS SOUTH SUBSTATION

Lot 2 DP 851503, No. 38 Burchill Avenue, Tweed Heads South.

ABN 63 804 205 206 | L1-40 York Street Sydney NSW 2010 | t: (02) 93999668 | f: (02) 93997708 | e: tm.mai@bm-arch.com.au | g: 3m.mai@bm-arch.com.au | w: www.bm-arch.com.au

countryenergy

BM

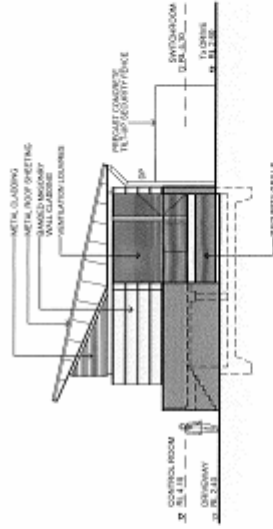
DA-01
SCALE: 1:600
DATE: FEB 07

COLOUR SCHEDULE

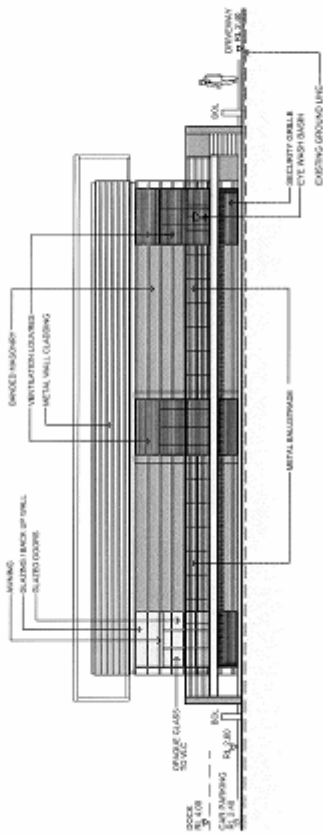
- ROOF - LIGHT GREY PBR-FINISHED METAL
- UPPER WALLS - LIGHT GREY PREFINISHED METAL CLADDING
- BRICK WALLS - BAKED PEARL GREY TERRACOTTA
- STAIR WALLS - BROWN BRICK
- LOUVERES - DARK GREY / BLUE POWDERCOAT CONCRETE - LIGHT GREY APPLIED COATING METAL
- BALUSTRADES - DARK GREY / BLUE PAINTED



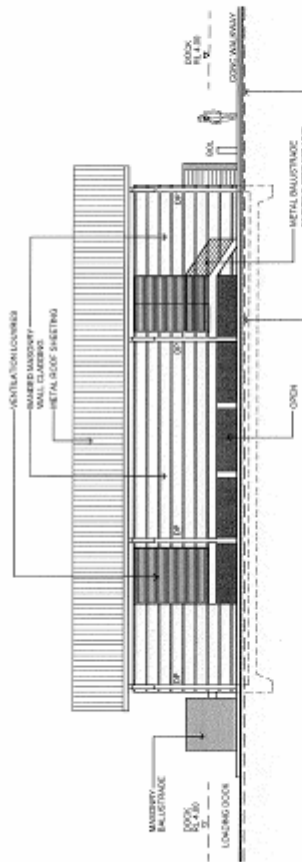
EAST ELEVATION



WEST ELEVATION



NORTH ELEVATION



SOUTH ELEVATION

TWEED HEADS SOUTH SUBSTATION

Lot 2 DP 518053, No. 37 Sunshyne Avenue, Tweed Heads South.

ABN 63 864 240 216 | LG-60 York Street Sydney NSW 2000 | T (02) 93202461 | F (02) 93202462 | e bn.maj@em.seth.com.au | website: www.bn-ack.com.au



DA-03
SCALE: 1:200
DATE: FEB'07



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 subject land (Lot 2) is zoned 5(a) Special Uses (Electricity) under the Tweed Local Environmental Plan 2000. The primary objective is to:

Identify land which is developed or is proposed to be developed, generally by public bodies, for community facilities and services, roads, railways, utilities and similar things.

The proposed development, being a 'Public Utility Undertaking' is permissible with consent in the 5a zone and is considered to be consistent with the zone objectives.

Clause 13 of the LEP refers to development on unzoned land. The proposed development involves use of part of Kirkwood Road, immediately adjacent to the southern boundary of Lot 2. This portion of the road reserve is unzoned and as such Council must consider whether the proposed development is permissible in the adjoining zone. As noted above, the proposed development is permissible with consent and consistent with the objectives of the zone for Lot 2.

Clause 15 of the LEP requires essential services to be available to the site prior to consent being granted for the development. The proposal will require connection to Council's reticulated water and sewer networks within the well-established urban area. The subject land has all essential services available.

Clause 16 of the LEP ensures development is undertaken in accordance with the building height plan. The subject land is identified as being limited to a three-storey height limit. The proposed development complies with the height limitation for the site.

Clause 17 of the LEP refers to social impact assessment. The Statement of Environmental effects states that...*'the proposed development would have a positive economic effect by increasing the capacity and efficiency of public utilities in the area and hence providing additional safeguards to existing business and employment in the region'*. It is also noted that potential noise or visual impact can be largely overcome by way of appropriate conditions of consent and adoption of mitigation measures detailed in the Statement of Environmental Effects. As such, a social impact assessment is not considered necessary for the proposed development.

Clause 33 of the LEP relates to obstacles to aircraft. The subject site is located within the 20 – 25 ANEF contour for the Gold Coast Airport. Although the proposed development will not pose as an obstacle to aircraft in terms of height of structures, the applicant has proposed that the roof and wall cladding associated with the proposal will have low reflectivity.

Clause 35 of the LEP requires acid sulfate soils management in relation to development where such is likely to be impacted upon. The site is located within a Class 2 acid sulfate soils area and as such the proposal requires development consent from Council under Part 4 of the EP&A Act. The applicant has provided an Acid Sulfate Soils Management Plan in relation to the proposed works. Council's Environment and Health Unit have assessed the management plan and provided relevant conditions of consent.

Clause 37 of the LEP refers to an electricity transmission line corridor traversing the subject site. The corridor is to cater for the alignment of and development in proximity to major transmission lines. Any proposed development within the corridor is required to be forwarded to Country Energy for comment, with Council considering any representations received from Country Energy.

Clause 39A of the LEP relates to Bushfire Protection. The subject site is nominated as Bushfire Prone Land on Council's GIS. As such, the proposed development was forwarded to the local branch of the Rural Fire Services for comment. Several recommendations were made in regards to the proposal, including the need for an evacuation plan. Although these recommendations have not been included as specific conditions of consent, the applicant has been advised of the recommendations made for the proposal with regard bushfire provisions.

North Coast Regional Environmental Plan 1988

In accordance with Clause 32B of the NCREP, the proposal is considered to be generally consistent with the relevant provisions of the NSW Coast Government Policy and the Coastline Management Manual. The development is sited approximately 350m from the Terranora Inlet and is not close to any beaches. The development will not impeded public access to the foreshore or cause any overshadowing of beaches or adjacent open space. Accordingly, the proposal fully complies with this clause of the REP.

State Environmental Planning Policies

State Environmental Planning Policy No. 44 – Koala Habitat Protection

The SEE states that an ecological investigation was carried out to determine potential impacts to Koalas, or their habitat, as a result of the clearing associated with the proposed substation development. The assessment concluded that there was no evidence of Koala activity or core Koala habitat identified within the study area. As such, a 7-part test of significance was not considered necessary with regard SEPP 44.



State Environmental Planning Policy No. 71 – Coastal Protection

Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development is considered compatible with the intent for the development of the locality.

Environmental Planning & Assessment Act

In accordance with s116C of the EP&A Act, a consent authority, in respect of a development application made by or on behalf of the Crown, must not:

- (a) refuse its consent to the application, except with the written approval of the Minister; or
- (b) impose a condition of its consent, except with the written approval of the Minister or the applicant.

With regard item (b) above, the applicant (Country Energy) has provided written approval of the draft conditions of consent. These conditions have now been applied to this consent.

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

Draft Tweed LEP 2007 (yet to be exhibited)

The Draft LEP 2007 nominates the subject site as zone SP2 Infrastructure. The proposed development is permissible with consent under the provisions of the Draft LEP.

(a) (iii) Development Control Plan (DCP)

Consolidated Development Control Plan

The principal development control plans governing the proposed development are DCP Parts A2 & A3. The level of compliance with the design parameters of the DCP is identified below.

Development Control Plan Part A2 – Site Access and Parking Code

The subject site has two existing vehicular access points off Sunshine Avenue. The construction of the proposed substation will involve use of part of Kirkwood Road as an alternative access point. This section of Kirkwood Road is to be revegetated at the completion of works, with access to the substation and associated control building being via the existing access points. Access to the site from the future Kirkwood Road extension has been raised as a possibility, subject to the road extension gaining approval.

The proposed development does not generate any additional demand for car parking provisions. Despite this, the applicant has incorporated four additional car parking spaces into the design for the proposed development, for use during the operational phase of the proposal.

Development Control Plan Part A3 – Development of Flood Liable Land

The subject site is flood liable land, with an adopted design flood level RL 2.60m AHD. As such, the proposal incorporates filling of the substation site to 2.6m AHD. In addition, Country Energy is proposing to raise the Control Building floor level to 4.1m AHD, providing a 1.5m freeboard from the 1 in 100 year flood level.

Council's Development Assessment Engineer has assessed the proposed development in this regard with no objections, subject to conditions of consent. These include (but are not limited to) the requirement for the lodgement of a S68 application with regard details of stormwater drainage and sediment & erosion control measures.

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

NSW Coastal Policy

The subject land is within the coastal policy area. The proposed development is consistent with the objectives strategies and actions of the policy.

Bushfire

The subject site is nominated as Bushfire Prone Land on Council's GIS. As such, the proposed development was forwarded to the local branch of the Rural Fire Services for comment. Several recommendations were made in regards to the proposal, including the need for an evacuation plan. Although these recommendations have not been included as specific conditions of consent, the applicant has been advised of the recommendations made for the proposal with regard bushfire provisions.

The Statement of Environmental Effects notes that *'asset protection zones will be implemented around the proposed substation compound in accordance with Country Energy requirements. These include:*

- *4 metres between the compound fence and nearest vegetation;*
- *use of vegetation-free gravel surfacing on compound areas; and*
- *provision of fire-fighting connections at the substation site, including minimum 80mm connection and hydrant location adjacent to the locked compound areas'.*

(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

Flora / Fauna

As noted earlier in this report, the proposed development incorporates clearing of approximately 0.64ha of existing vegetation with approximately 0.06ha being Swamp Sclerophyll vegetation.

Under Section 5A of the EP&A Act, a 7-part test was required to determine whether there is likely to be a significant effect on threatened species, populations or ecological communities or their habitats.

The applicant's ecological assessment states that:

'Within the Kirkwood Road reserve, the Swamp Sclerophyll Forest on Coastal Floodplains in NSW North Coast, Sydney Basin, and South Eastern Corner Bioregions Endangered Ecological Community (EEC) was identified. A six metre wide strip of approximately 0.06ha of this EEC will be cleared under the currently proposed development to make way for the substation pad and batters. This community was observed to be in generally poor condition due to the infestation of noxious weeds.

Other than the Swamp Sclerophyll Forest, no threatened species, populations or ecological communities (or their supporting habitats) that are listed under the TSC Act or the EPBC Act were recorded in the existing depot site or the portion of Kirkwood Road proposed for development during surveys. Due to the negligible habitat resources present in the depot, none are expected to occur. Therefore the Swamp Sclerophyll Forest is the only constraining ecological factor to the proposed development.

A 7-part test (listed under the TSC Act) has been conducted to determine the significance of potential impacts to this EEC (refer to Annex C). This assessment concluded that with appropriate mitigation measures (described below), no significant impact would be incurred as a result of the proposed development.

Council's Senior Ecologist / Conservation Planner has inspected the subject site and assessed the proposed development, noting the following:

- '1. The SEE states that a total of 0.64ha of vegetation will be removed as part of the proposed development. Most of this is claimed to be "Disturbed Woodland Vegetation" while 0.06ha of the total is consistent with the Swamp Sclerophyll Endangered Ecological Community (EEC) scheduled under the Threatened Species Conservation Act 1995.*

2. *The site inspection confirmed that “Disturbed Woodland Vegetation” consisted of the following scattered trees to 15m without any understorey; six Eucalypts (E. pilularis, E. tereticornis, E. robusta) and six Paperbark (Melaleuca quinquenervia) trees. The trees are not significant species although they may provide some foraging habitat for fauna.*
 3. *The proponent concludes that the loss of 0.06ha of Swamp Sclerophyll EEC is not significant within the meaning of s5A of the Environmental Planning and Assessment Act 1979 (EPA Act; 7-part test of significance) providing:*
 - *The SSFCF vegetated area that is proposed to be removed would be revegetated approximately three-fold with species endemic to the SSFCF in the Tweed River lowlands. This revegetation would involve irrigation and weed management to ensure the establishment of the plantings; and*
 - *All dead wood and dead trees that exist within the SSFCF community should be retained in situ.*
- (Source: SEE Annex C – 7 Part Test – Swamp Sclerophyll Forest on Coastal Floodplains)*
4. *Whilst it is acknowledged that such ameliorative measures may be included in an assessment of whether or not impacts on vegetation communities are likely to be significant within the meaning of s5A of the EPA Act, such measures should only be suggested where there is no feasible alternative. The SEE contains no discussion on the feasibility of moving the proposed switchyard several metres north to avoid the EEC’.*

It was also noted that...‘at present Tweed Shire does not have a policy on compensatory habitat offsets, however a 10 to 1 compensation ratio is anticipated under the draft SEPP14 Compensatory Wetlands Policy partly on the basis that such areas are of State Significance’. Although Council would ideally prefer a compensation ratio of 10 to 1 (as Council has used in other projects involving the removal of EEC vegetation), Council’s Senior Ecologist has concluded that a 3 to 1 compensatory ratio of locally endemic species consistent with the Swamp Sclerophyll EEC to be replaced is acceptable in this instance.

It should be noted that if such compensatory measures were not included in the 7-part test, a Species Impact Statement (SIS) would be required by the applicant to determine the impact of the removal of the EEC vegetation. Appropriate conditions of consent have been applied, including the need for a Plan of Management to ensure the long-term management of the area for ecological purposes.

Noise Impact

Potential noise impact from the proposed substation has been raised as a major concern by the majority of the submissions against the proposal, particularly the permanent residents of the adjoining holiday park to the west. The submissions highlight that the cabins and relocatable homes within the park are...*'made of aluminium and are impossible to insulate against sound'*. In addition, the submissions note that the 3m high masonry fence on the western and southern boundaries of the substation compound are for security purposes and are not designed as acoustic devices.

The applicant has addressed the issue of noise impact by undertaking a noise assessment in accordance with the NSW Government Policy, stating that...*'for this site the noise generating plant (transformers) operate continually over the 24 hour period and therefore the strictest criterion is for Intrusiveness during the night time period as it was the quietest background level plus 5dB. Since the overall measured night time background level was 37dB(a), the assessment criterion for the site noise is therefore 42dB(a)'*.

The proposed development incorporates a 3m high masonry wall along the western and southern boundaries of the substation. The SEE notes that the masonry tilt fencing along the western boundary will act as a break in the line of sight and therefore reduce noise levels in this direction. The applicant goes on to note that...*'this type of barrier would offer a reduction in noise impacts by at least 5dB. The calculation to predict noise impacts at the nearest residences therefore looked at the noise levels that would be received with and without the wall. It found that without the wall, the noise levels from the substation would be 39dB(A), and with the wall, 34dB(A). Both of these values are well within the criteria of 42dB(A) for the nearby residents'*.

Council's Environment & Health Services Unit has assessed the proposed development in this regard, with the following comments:

'An assessment of the noise impacts based on the proposed transformers for the site was undertaken by ERM. It is apparent from the results submitted that the distance between the structure and the caravan park appears sufficient to minimise noise impact generated by the operation of the transformers (with the modifying factor included) during the night periods (lowest background noise levels recorded).

The applicant proposes to install a 3m precast masonry fence to the south and west elevations of the switchyard. The installation of the concrete panel fence along the western boundary of the proposed switch yard is stated to potentially reduce noise created from these transformers by up to an additional 5dB(A). The positioning of the concrete panel wall is consistent with the DEC Noise Guide for Local Government June 2004 Part 3 Section 3.2.2, which advises that barriers are most effective when they are located close to the noise source and when they block the line of sight between the source and the receiver. It is also noted however that barriers are less effective for low-frequency noise. Solid brick walls and concrete blocks or panels are common materials used for noise barriers.

Based on this assessment, as the transformers are the main source of noise from the proposed development and the separation distance alone (i.e. excluding the installation of the concrete panel fencing) between the transformers and nearest residential receivers is sufficient to minimise noise impact to those receivers during operation (including night periods) without the implementation of additional noise control devices, it is considered appropriate that any noise potentially generated by other sources at the development site will also comply.'

Appropriate conditions of consent have been applied including (but not limited to) the requirement for a Post Construction Noise Impact report to determine the noise actually generated by the plant and activities associated with the substation and recommend appropriate amelioration measures if necessary.

Visual Impact

Similar to that of noise impact, the majority of the submissions against the proposed development highlight visual pollution as a concern to adjoining residents of the holiday park. The submissions note the existing vegetation enjoyed by the residents is to be replaced with the substation switchyard equipment of unknown height, with only a 3m high fence to provide a visual screen.

In response to the submissions, the applicant has provided Council with photomontages (attached under separate cover) of the proposed development with and without the proposed landscaping works between the western boundary of the compound and the adjoining residents of the holiday park. Landscaping is also proposed along the southern boundary of the compound to reduce potential visual impact in the event that the Kirkwood Road extension gains approval. In addition, roof and wall cladding is to have low reflectivity to reduce visual impact to neighbouring properties, as well as prevent undesirable light reflection to aircraft using the Gold Coast Airport.

The applicant has also provided elevations of the equipment within the proposed switchyard. These plans indicate that the electrical equipment is approximately 3.5 - 6m in height. The proposed masonry wall is only 3m in height, leaving the top 0.5 - 3m in view of the residents. As shown on the proposed Landscape Plan and photomontages, the applicant intends to ameliorate potential visual impacts over time by way of landscaping the area between the western boundary of the compound and the holiday park, as well as along the southern boundary of the compound.

Electric & Magnetic Fields (EMF)

Health effects from EMF have been raised as a concern by submissions, especially considering the 24hr exposure to the elderly (permanent) residents of the adjoining Holiday Park and the nearby location of the Lindisfarne primary school.

The applicant has provided an assessment of the EMF likely to be produced as a result of the proposed substation, which has been attached under separate cover. The report by Connell Wagner discusses: electric and magnetic fields; exposure guidelines; and prudent avoidance. The applicant notes the following conclusion made by the EMF assessment:

'The following conclusions were made as a result of the assessment of the Electric and Magnetic Fields (EMF) likely to be produced as a result of the proposed 66/11kV Tweed Heads South substation:

- *The magnetic fields at nearby residences will remain negligible.*
- *The magnetic fields at the security fences of the substation will only be a few milligauss.*
- *The magnetic fields at the western property boundary will also be only a few milligauss.*
- *There will be localised areas of higher magnetic fields at the south western corner of the site associated with incoming and outgoing feeder connections. Under normal operations, these fields are unlikely to exceed 30 milligauss and would be localised to the areas a few metres each side of the cables.*
- *The magnetic fields from the substation will not increase the existing levels at the neighbouring residences.*
- *The magnetic fields at and beyond the Country Energy substation security fence will be less than 3% of the relevant health guideline.*
- *The magnetic fields within the internal areas of the substation, which are accessible only to Country Energy staff, will be generally in the range of 0-100 milligauss and will comply with all relevant occupational health guidelines.*

- *The electric fields within the internal areas of the substation will also comply with all relevant occupational health guidelines.*
- *There will be no source of external electric fields’.*

Council’s Environment & Health Services Unit has assessed the proposed development in this regard, with the following comments:

‘Connell Wagner (the consultant) advises that while EMF involves both electric and magnetic components, electric fields are driven by the system voltage and are relatively constant over time, are relatively shielded and, in health context, are generally not associated with the same level of interest as magnetic fields.

It is noted that the National Health and Medical Research Council’s “Interim Guidelines on limits of exposure to 50/60Hz electric and magnetic fields” have expired and are currently under review, however the document establishes exposure limits, which are still generally used until such time as a replacement document is published:

Electric Fields maximum 5kV/metre for general public exposure for up to 24 hours per day

Magnetic Fields maximum 1000 milligauss for general public exposure for up to 24 hours per day.

The consultant has advised that as predictions of possible magnetic fields are difficult to establish, the magnetic fields likely to be generated from the proposed development were extrapolated from similar developments. It is noted that nearest receiver, the holiday park boundary, is approximately 30m from the nearest piece of electrical equipment. Based on similar substations, the consultant indicates that the proposed substation at Tweed Heads South (including incoming and outgoing underground cables) would be well within the above exposure limit guidelines, and magnetic field exposures likely to be experienced intermittently as a result of the development are consistent with the range encountered in everyday life (stoves, computers, hair dryers etc).

The consultant also advises that electric fields will be localised to the 66kV switch bays and will not extend beyond the station fence’.

Appropriate conditions of consent have been applied including (but not limited to) the requirement for a Post Construction report measuring the EMF levels generated by the electricity substation. The report is to consider National guidelines on limits of exposure and recommend appropriate amelioration measures as necessary.

Waste Oil Hazard

The applicant has identified that there is potential hazard created from the significant volumes of oil contained by the transformers associated with the substation. Leakage of the oil has potential to result in contamination of soils, groundwater and downstream watercourses. The SEE proposes mitigation measures in relation potential impacts.

Council's Environment & Health Services Unit has noted the following with regard this issue:

'The transformers to be used on this site will each contain approximately 50,000L of oil. To prevent potential hydrocarbon contamination of soils, groundwater and surface water, the transformers are to be located on concrete slabs within concrete bunding forming a contained area. Each bunded area will drain to an underground containment tank with a larger capacity than the transformer's oil reservoir. Any oil collected in the underground containment tanks would be pumped out by a licensed contractor. Conditions to apply.'

(c) Suitability of the site for the development

Alternative Sites

As a result of concern raised by the adjacent holiday park, Country Energy commissioned Clarence Consultants Pty Ltd to prepare a Site Investigation Report (attached under separate cover) with regard the most suitable site for the proposed substation. The report identifies seven possible locations for the substation, including the subject site. From this report, the applicant has made the following summary:

'The proposed site located at 39 Sunshine Avenue was identified as the preferred site, though its proximity to the adjacent caravan park was identified as a potential constraint. The opportunities of the site include:

- *Sufficient area in the south west portion of the site to accommodate the substation with the agreement of Council for a land swap (as outlined in the SEE);*
- *Existing on-site vegetation is of low value and weed infested;*
- *Close proximity to the existing Tweed North – Banora Point 66kV line (approximately 1,100m to the east);*
- *Surrounding corridors for transmission line purposes to the east and west (nominated in the Tweed LEP 2000, Clause 37);*
- *Centrally located between the Tweed North and Banora Point substations;*
- *Suitable for effective location of electricity feeders to the area north of the Tweed River; and*
- *Adequate route options for 11kV feeders out of the substation.*

The site is zoned 5(a) Special Uses (Electricity) according to the Tweed LEP and hence the community would have an expectation that it would be utilised for such purposes. Since 1992 the site has been used for public utility (electricity) undertaking purposes (a Country Energy Depot) and the substation can be located within the site whilst providing sufficient buffers including availability of land for significant landscaping. The site is also partially located within a transmission line corridor as identified on the Tweed LEP zoning maps to which Clause 37 of the LEP applies. The aim of Clause 37 is to allow for the alignment of major transmission lines and to require consultation with Country Energy regarding the development within the transmission line corridor.

The site is in an ideal location for the development of a substation due to its specific land use zoning, its existing use as a Country Energy Depot, and its location adjacent to a major transmission line corridor as identified by Council's LEP'.

The Director of the adjacent holiday park (Mr Tribe) has forwarded a response (see attachment under separate cover) to the Site Investigation report by Clarence Consultants. This response essentially dismisses the accuracy of the report, highlighting negatives of the proposed site on Sunshine Avenue, recommends that an Industrial site (Site B) be a more appropriate location and even suggests an alternative site (Site H) to all those investigated by Country Energy. The letter concludes that there are too many unknowns with regard health risks and Country Energy...*'should exercise 'Prudent Avoidance' by locating the substation in an industrial site (B) or away from everyone (H). Both sites will have minimal negative visual, noise, electric / magnetic field radiation and stormwater effects inherent with the Sunshine Avenue proposal'.*

The applicant advised that as of 7 August, Country Energy was yet to receive a copy of the abovementioned letter and were unable to provide further response. Nevertheless, it was noted that Country Energy had been consulting with Mr Tribe over the past months and would continue to do so once the correspondence was received.

As noted elsewhere in this report, potential noise and EMF issues have been addressed by the applicant, with mitigation measures proposed in an effort to reduce any potential impact. Council's Environmental Health Services Unit has applied appropriate conditions of consent in this regard. In terms of loss of vegetation, Country Energy has agreed to compensatory measures acceptable to Council, in order to replace the EEC vegetation lost as a result of the proposed development. With regard alternative site locations, Council have been unable to provide comment (in terms of timing restrictions) on this issue raised by the late submission from Mr Tribe. However, given the zoning of the land, proposed mitigation measures and conditions of consent applied to this application, the proposed development is considered to be suitable for the subject site.

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

The proposed development was advertised for 14 days in accordance with the requirements of the Environmental Planning and Assessment Act 1979. 65 written submissions by way of objection were received, 57 of which were in the form of pro-forma letter. The following table addresses the issues raised in the submissions.

Public Submission Issues

OBJECTION	IMPACT ASSESSMENT
<i>Inappropriate/unsuitable location being adjacent to school & residential / holiday park</i>	Suitability of the site for the proposed development has been discussed in detail above. Although the subject land is zoned for such facilities, the potential impacts of the substation need to be taken into consideration. Although there appears to be several other locations in the area that could potentially meet the criteria for the proposal, the subject site is considered to be suitable for the proposed development.
<i>Social / economic impact</i>	There are negative and positive aspects of the proposed development with regard social & economic impact on the surrounding environment. Positive aspects are in the form of providing a more reliable electricity supply for an ever-increasing residential and business population. The applicant has suggested mitigation measures to ameliorate potential negative aspects of the proposal such as visual and noise impact. Appropriate conditions of consent have been applied.
<i>Inconsistency with SEPP71: Pt2 Cl8 (a) – protection of the natural, cultural, recreational & economic attributes of the area; Ensure visual amenity is protected; Protect & preserve marine environment. Pt3 (d) – suitability of site given type location & design of development with surrounding area. Pt4 Cl16 – discharge of untreated stormwater into nearby water body.</i>	The applicant has addressed all outstanding issues within SEPP 71, namely: the natural, cultural, recreational and economic attributes of the site have not been impacted upon. Compensatory landscaping at a rate of 3:1 is proposed for the loss of EEC vegetation. The applicant has proposed a 3m tall wall and extensive landscaping to address potential visual impact to surrounding residents. The proposed development is not considered to impact upon local marine environment. The development will require approval to connect to Council's stormwater infrastructure. In terms of suitability, the applicant has noted the zoning of the subject site and surrounding properties, concluding that following completion of the substation there would be minimal impact on the nearby school, residential areas and holiday park. All stormwater runoff from the hardstand areas of the substation will be required to connect to Council's stormwater drainage infrastructure. The applicant is required to provide further details in this regard in order to gain separate approval on the matter.
<i>Visual Impact</i>	Visual impact has been addressed in this report. Potential areas affected by visual impact are to the south and west of the substation compound. The applicant has incorporated a 3m high wall around the compound and extensive landscaping in an effort to reduce this potential impact.
<i>Noise Impact</i>	Similarly, noise impact has been addressed in detail within the report. Country Energy is required to comply with NSW Government guidelines in terms of noise output and the proposed 3m high walls will reduce the noise levels somewhat. Council also requires that a Post Construction noise assessment be undertaken to ensure the noise levels are acceptable & identify any appropriate amelioration measures as necessary.
<i>EMF concerns</i>	The issue of EMF has been addressed in detail within this report.

OBJECTION	IMPACT ASSESSMENT
	The applicant has provided an assessment report on the matter, which notes that whilst scientific studies are inconclusive on the long-term health of EMF, prudence avoidance measures should be employed. The report concludes that the site is acceptable in terms of all relevant guidelines. A Post Construction report is required to measure the EMF levels generated by the electricity substation & identify any appropriate amelioration measures as necessary.
<i>Flooding / stormwater impact</i>	The subject site is flood liable land. The proposal incorporates 200mm of fill to raise the compound level to the design flood level. It is not expected that this filing would impact upon the surrounding area in terms of flooding. With regard stormwater, Country Energy will be required to gain separate approval from Council for connection to the reticulated water (and sewage) and stormwater system.
<i>Loss of existing vegetation</i>	The proposed development does incorporate the removal of existing vegetation on the subject site, including 0.06ha of ecologically endangered community (EEC) vegetation. A condition of consent requires Country Energy to replace the EEC vegetation lost at a rate of 3 is to 1 on the subject site. The applicant has provided a detailed landscape plan indicating the proposed level of landscaping works upon completion of the proposed works.
<i>Location of proposed feeder line in Holden Street</i>	The applicant has noted that the feeder line in Holden Street does not form part of this development application. However, in the future electricity feeders may be installed from the proposed substation along Holden Street based on demand in the surrounding region. In any case, future feeders would only be 11kV, which is common voltage for electricity transmission lines in residential areas.
<i>Reduction in land values</i>	Impact upon surrounding land values is not a matter of consideration under s79C of the EP& A Act.

(e) Public interest

The provision of adequate power supply is obviously in the public interest of the general community as a whole. However, this needs to be weighed up against the concerns of those who may be directly impacted by such a development, and determine whether the subject site is the most appropriate location for such infrastructure.

OPTIONS:

1. Approve the proposed development in accordance with the recommended conditions.
2. If the proposed development is not supported, Council will need to refer the application to the Minister for determination, pursuant to the provisions of s116C of the EP&A Act.



LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the proposed development is not supported by Council and the applicant is dissatisfied with the determination of the Minister, the applicant may determine to lodge an appeal with the Land & Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The arguments presented by the applicant for the proposed development are considered sufficient to warrant approval of this application. The merit assessment of the applicable issues relating specifically to noise and visual impact; EMF health concerns; and loss of EEC vegetation suggests that the proposal is suitable for the site. Therefore, the proposed electricity substation is recommended for approval, subject to conditions of consent.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).

1. Coloured Landscaping Plan & Photomontages (DW 1649092)
 2. Electric & Magnetic Field (EMF) Assessment (Connell Wagner) (DW 1649935)
 3. Site Investigation Report (Clarence Consulting) (DW 1649868)
 4. Letter from Director of the Billabong Holiday Park (dated 2 August 2007) (DW 1649093)
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PLANNING COMMITTEE MEETING DATE: TUESDAY 21 AUGUST 2007
