



AGENDA

PLANNING COMMITTEE MEETING

Tuesday 11 September 2007

Chairman: Mr Max Boyd AM

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



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REPORTS THROUGH GENERAL MANAGER

REPORTS FROM DIRECTOR PLANNING & REGULATION

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

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

MATTERS FOR CONSIDERATION

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



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P1 [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 at its meeting of 21 August 2007 resolved to defer the application for further consideration to be given to this application by the Board of Country Energy.

By way of letter dated 3 September 2007, Country Energy's Managing Director, Craig Murray has responded as follows: -

"I write in response to Tweed Shire Council's request for Country Energy's Board of Directors to endorse the Development Application submitted for construction of a zone substation at Country Energy's Field Service Centre site in Sunshine Avenue, Tweed Heads.

As Council would appreciate, Country Energy has a responsibility to ensure the security and reliability of the power supply to meet the existing and future electricity needs of the rapidly growing Tweed Heads area. I am pleased to assure Council of Country Energy's commitment to meeting all relevant statutory requirements, to ensure this project delivers a safe and environmentally responsible essential service to homes and businesses in the Tweed.

The field service centre site has been in use for over 25 years and under the Tweed Local Environmental Plan 2000, this land is designated Special Uses (5A) Electricity. This zoning was established to allow for development of the site to strengthen security of supply, when required.

As part of Country Energy's normal consultation process, our regional management team has met with neighbouring businesses, including Lindisfarne Primary School and the Tweed Billabong Caravan Park, to explain the proposal and address their concerns.

Following these discussions, Country Energy engaged an independent consultant to review the preferred site and five alternative sites. The report confirmed that the filed service centre site was the best option available following consideration of environmental, community, technical and financial aspects of the project.

Country Energy also engaged a consultant to review concerns raised regarding electro-magnetic fields (EMFs), with the report finding the electro-magnetic fields from the substation will not increase the existing levels at neighbouring residences.

We have made these reports available to caravan park management and residents.

Country Energy has carried out a Statement of Environmental Effects and has reaffirmed its commitment to the implementation of a stepped noise mitigation strategy to ensure ambient background noise meets with Environmental Protection Authority (EPA) regulations. Studies have confirmed the proposed development will not contribute to an increase in ambient noise levels during the quiet evening period. We have also agreed to construct a noise abatement wall inside the substation.

Country Energy is mindful of the visual amenity of the area and is proposing to locate the substation as far as practical from the boundary and we will underground electricity mains to the substation. Extensive landscaping of native vegetation around the proposed substation will be carried out to provide a natural screen to enhance the visual amenity.

The proposed substation is similar in design and function to many substations across the State, and as a new development we are able to utilise the latest technology to deliver the best solution available, both technically and visually.

Finally, as a state-owned corporation Country Energy has a well established corporate governance framework which balances transparency and accountability in the management of the business while allowing for efficient day-to-day operations. Under this framework, operational decisions are the responsibility of executive management operating under appropriate delegated authority. As Managing Director, it is my role to ensure that operational decisions are consistent with the governance principles established by the Board. Having reviewed the management of the project in question, I am more than satisfied that this has been the case.

Once again, I wish to assure you of our commitment to working with the Tweed community to ensure we continue to provide an essential service to our local customers.

I would be happy to discuss this project with you, either in person or by telephone, at a mutually convenient time. Please feel free to call me on 02 6589 8697."

The Council report of 21 August 2007 and recommended conditions of consent is reproduced below.

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:

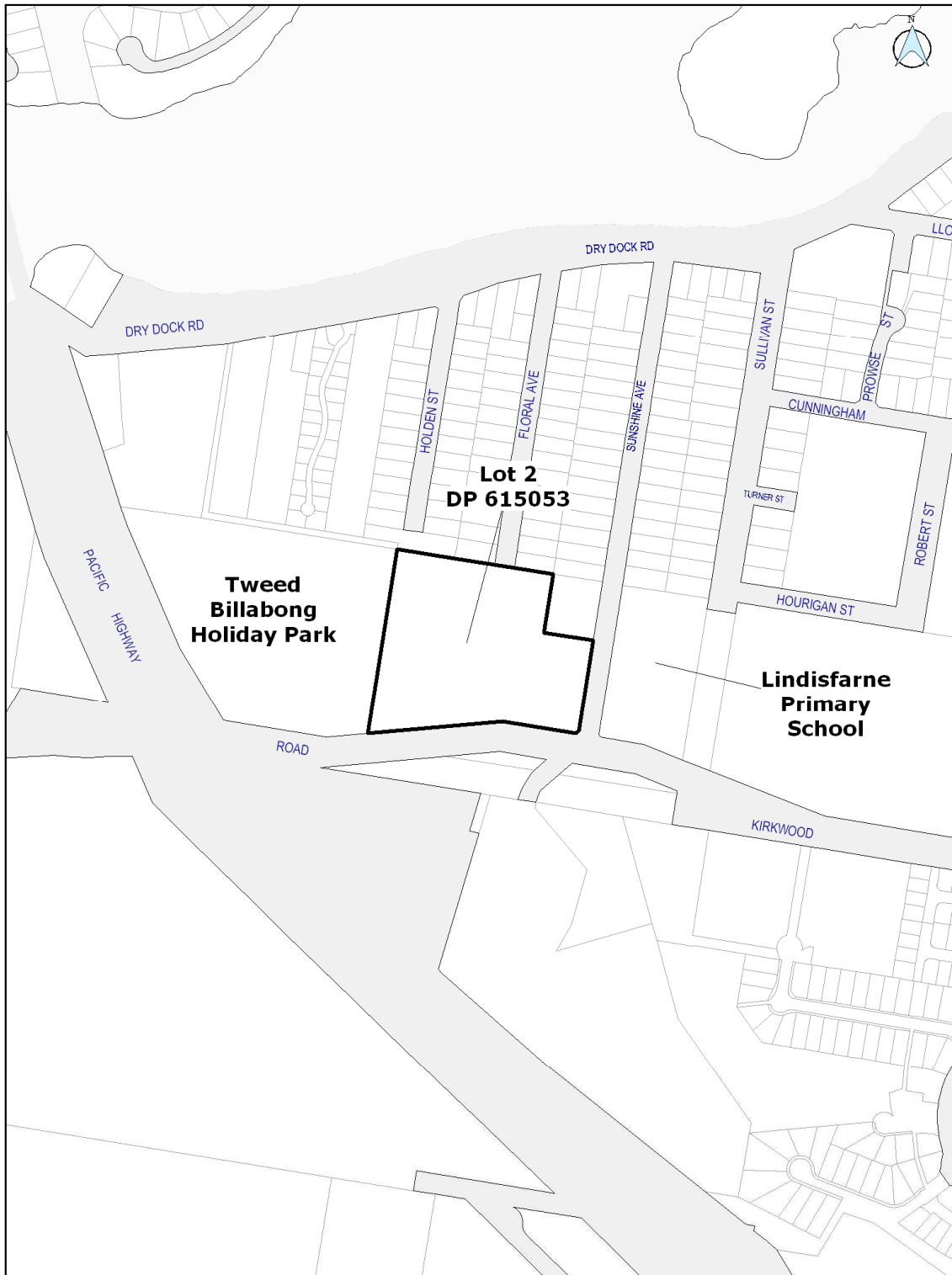
- Two 66kV feeders from the existing 66kV sub-transmission line;
- Two transformer bays containing 66/11kV 20/30MVA transformers;
- A 4.5MVA 11kV capacitor bank;
- Busbars, 66kV switches and other miscellaneous plant; and
- An oil collection tank.


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:

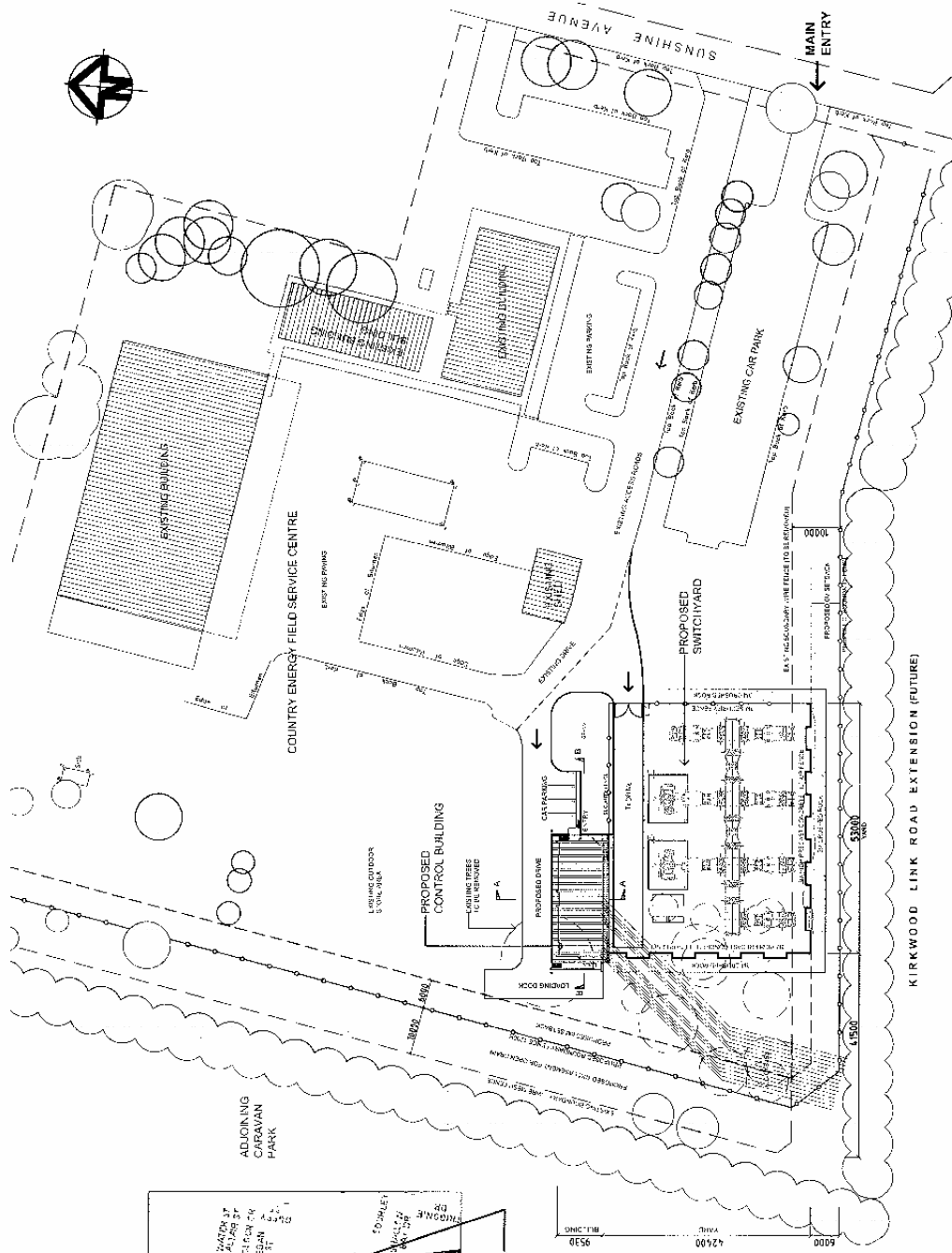
- Replanting of areas around the compound that are disturbed by earthworks for the substation pad and conduits (0.115ha);
- Rehabilitation of retained Swamp Sclerophyll vegetation along the new southern boundary of the site (0.125ha); and
- Ongoing weed control within the site.

SITE DIAGRAM:

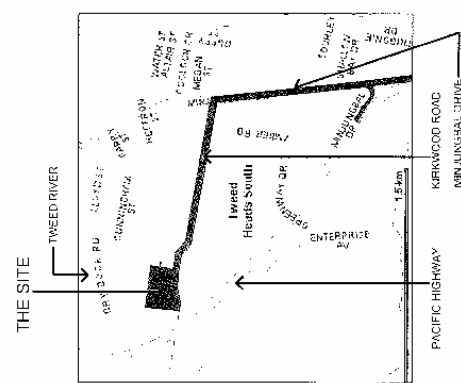


<p>© TWEED SHIRE COUNCIL 2007 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah, NSW., 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2489</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 Sheet: 1 of 1</p>
<p>File: N:\Munsys\A4P - SITE PLAN.Wor Author: B. Ingram Date: 15/Aug/2007 Scale: 1:5,000</p>			

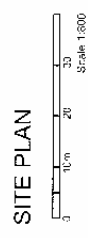
DEVELOPMENT PLANS:



DA-01
SCALE: 1:500
DATE: FEB 07



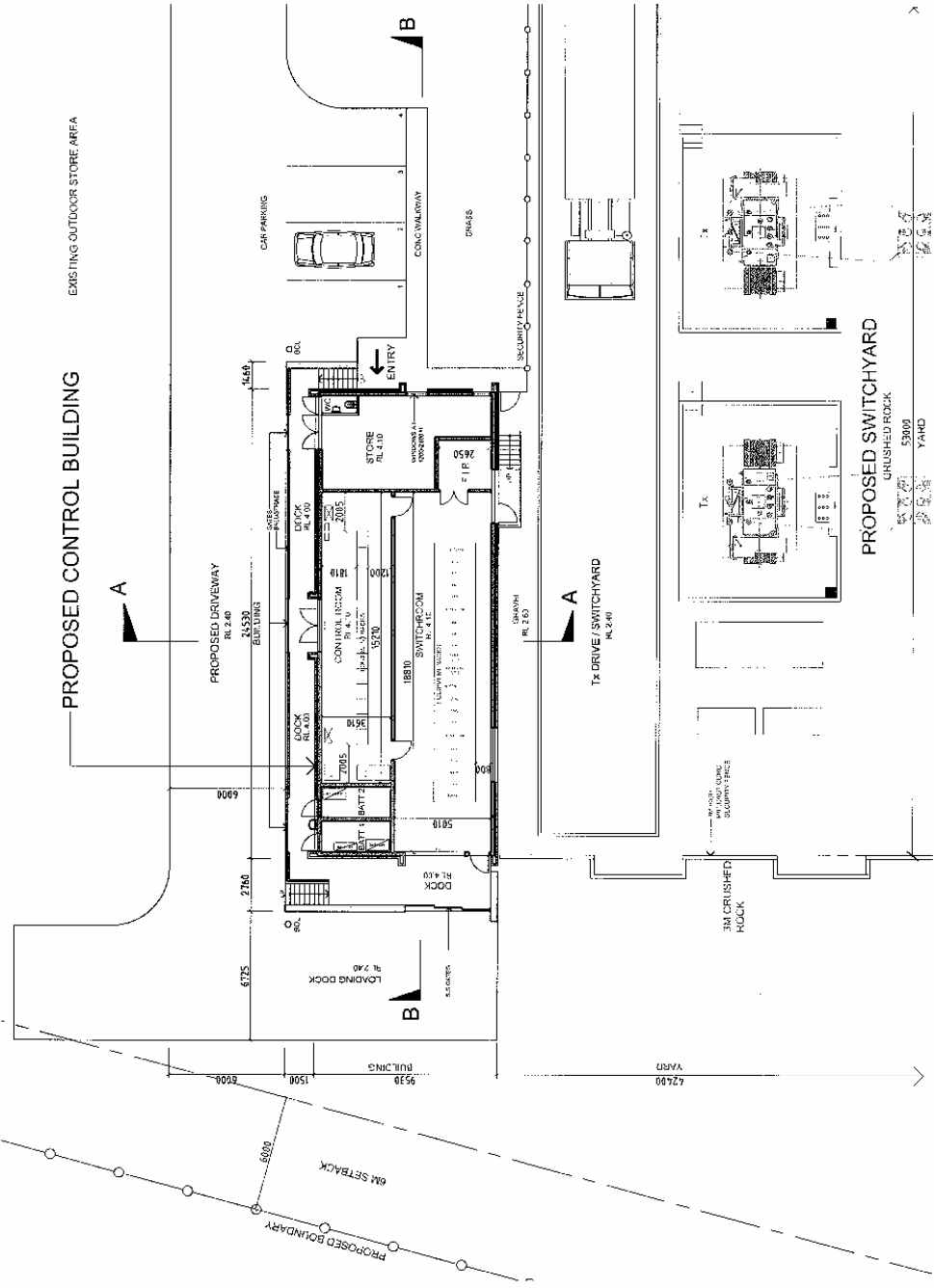
LOCATION PLAN
(AERIAL PHOTO)



SITE PLAN

TWEED HEADS SOUTH SUBSTATION

ABN 63 804 200 206 | LE-98 York Street Sydney



FLOOR PLAN

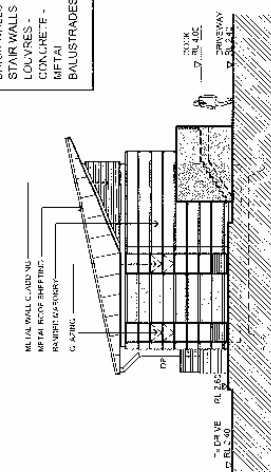
TWEED HEADS SOUTH SUBSTATION



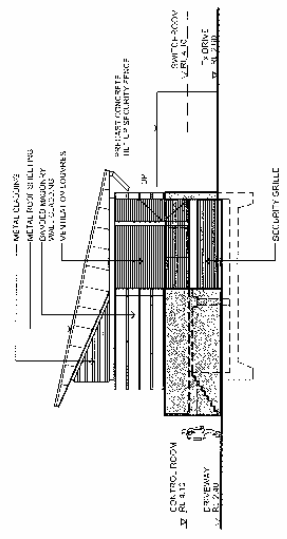
ABN 63 804 200 206 | L6-698 York Street Sydney NSW

COLOUR SCHEDULE

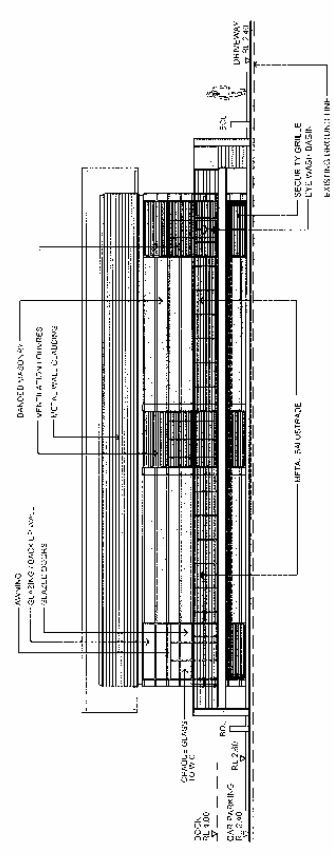
- ROOF - LIGHT GREY PRE-FINISHED METAL
- UPPER WALLS - LIGHT GREY PREFINISHED METAL CLADDING
- BRICK WALLS - BAYDED PEARL GREY TERRAZZO 'A'
- STAIR WALLS - BROWN BRICK
- LOOKYRES - DARK GREY / BLUE POWDERCOAT
- CONCRETE - LIGHT GREY APPLIED COATING
- METAL BALUSTRADES - DARK GREY / BLUE PAINTED



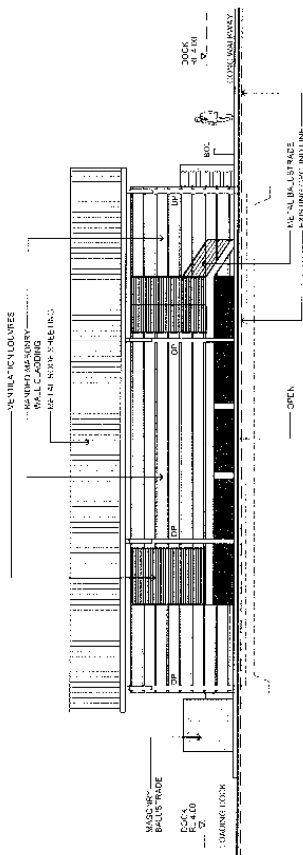
EAST ELEVATION



WEST ELEVATION



NORTH ELEVATION



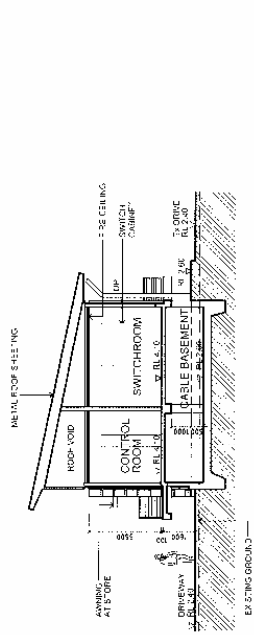
SOUTH ELEVATION



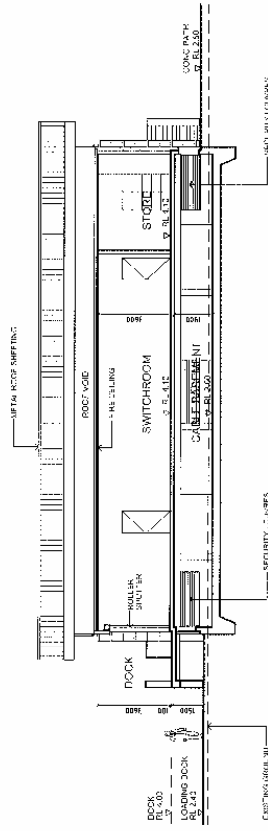
TWEED HEADS SOUTH SUBSTATION

DA-03
SCALE 1:200
DATE FEB 07

AEN 63 804 200 208 | L5-99 York Street Sydney



SECTION A



SECTION B

DA-04
SCALE: 1:200
DATE: FEB '07

TWEED HEADS SOUTH SUBSTATION

ABN 63 804 200 206 | LG-89 York Street Sydney

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 banded 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 developmentAlternative 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.

OBJECTION	IMPACT ASSESSMENT
<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. 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.

OBJECTION	IMPACT ASSESSMENT
<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).*

Nil



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P2 [PR-PC] Class 4 Appeal - Development Application DA06/0413 for a Staged Seniors Living Development under SEPP (Seniors Living) 2004 Comprising 84 Independent Living Units, 94 Supported Living Units & 67 Beds within a High Care Facility at Lot 1 DP 786570

ORIGIN:

Development Assessment

FILE NO: DA06/0413 Pt6

SUMMARY OF REPORT:

Council has been served with a Class 4 Appeal (third party appeal) for DA06/0413 which approved a Senior Living Development at Lot 1 DP 786570, No. 87-89 Tweed Coast Road Hastings Point.

At the Planning Committee Meeting of 8 May 2007 the above application was recommended for approval subject to conditions of consent. Based on this recommendation the application was approved.

Council has now been served with a Class 4 Appeal by the Hastings Point Residents Group and Progress Association Incorporated (via the Environmental Defenders Office). Tweed Shire Council is the first respondent with Aeklig Pty Ltd (the original applicant for the DA) as the second respondent.

It should be noted that this is an Appeal limited to whether proper processes and procedures have been followed and is not on the merits of the decision.

It is recommended that Council defend this Appeal.

RECOMMENDATION:

That Council's Solicitors (Marsdens) act on Council's behalf and defend Appeal Number 40785 of 2007 in the Land Environment Court.

REPORT:

Applicant: Aeklig Pty Ltd
Owner: Mr AP McIntosh
Location: Lot 1 DP 786570 No. 87-89 Tweed Coast Road, Hastings Point
Zoning: 2(c) Urban Expansion
Cost: \$25,000,000

BACKGROUND:

On 8 May 2007 Council considered a Development Application for the re-development of the existing Hastings Point Holiday Caravan Park for the purposes of an aged care facility. The new development proposed to provide a total of 245 units (or 394 beds) in a combination of independent living units, hostel use units and residential care units, which will have 24-hour medical assistance available.

In addition to the re-development of the site the applicant proposed to continue operating the existing Holiday Caravan Park under a diminished caravan park licence.

The key issues for consideration included (but were not limited to):

- The impact on existing residences;
- The impact the development would have on the character of Hastings Point;
- The overall bulk and scale of a three storey development within Hastings Point;
- The suitability of the setback variation to the 50m criteria to Cudgera Creek;
- The suitability of the interpreted SEPP 14 boundary line;
- The suitability of the site for the development; and
- The general public interest.

Having considered all of these issues in addition to the statutory assessment the proposed development was recommended for conditional approval.

At the Council Meeting of 8 May 2007 the recommendation was adopted and subsequently approval granted to the applicant on 14 May 2007.

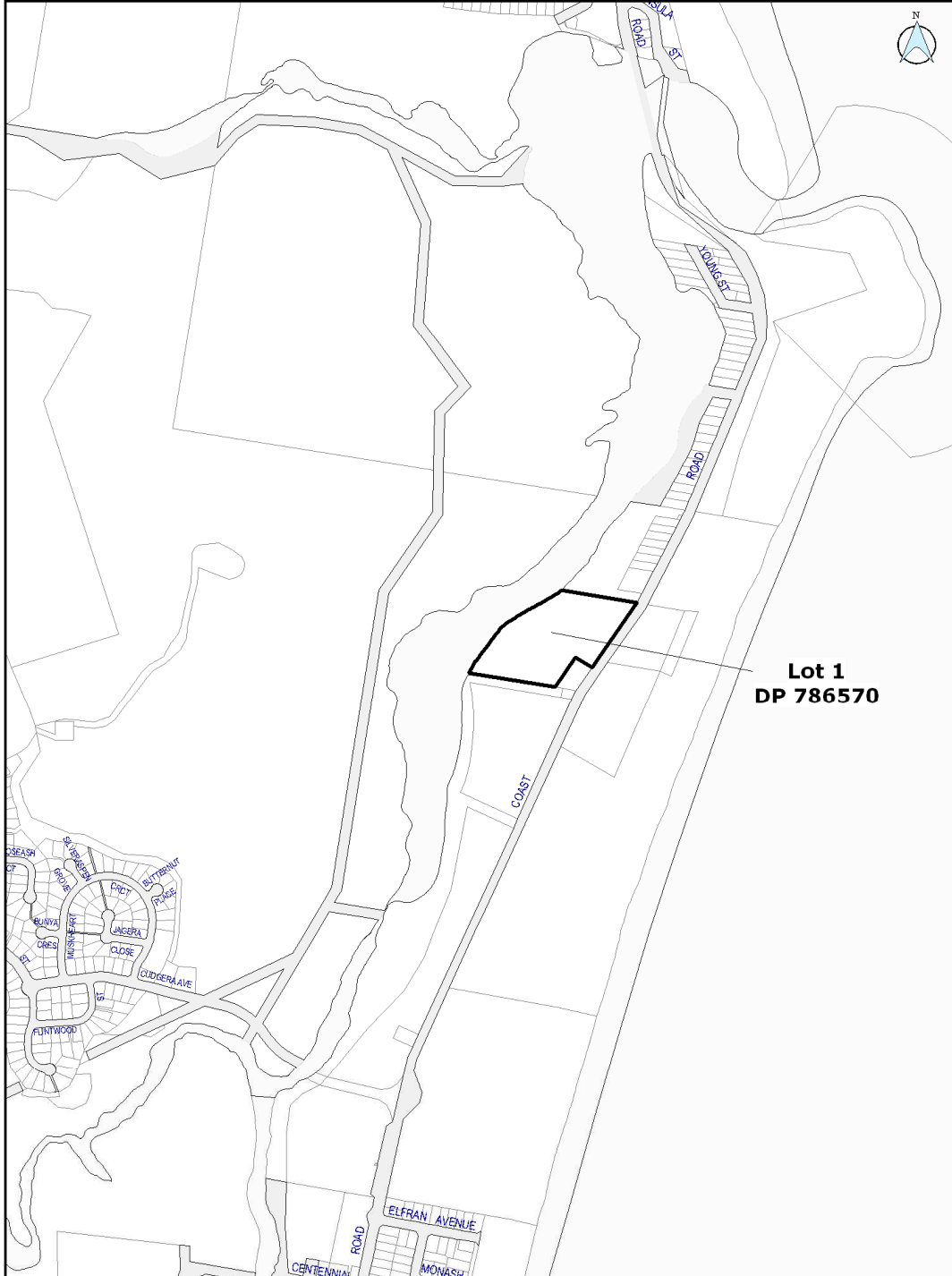
Council has now been served with a Class 4 Appeal by the Hastings Point Residents Group and Progress Association Incorporated (via the Environmental Defenders Office). Tweed Shire Council is the first respondent with Aeklig Pty Ltd (the original applicant for the DA) as the second respondent.

Given the time table required by the Court, Council's Solicitors Marsdens have been briefed in this matter and have commenced Council's defence.


The basis upon which it is alleged that the consent is void will not be known until the applicant serves its Points of Claim and affidavits. At that time Council will need to consider its position in relation to defending the proceedings specifically having regard to filing a submitting appearance only or whether to defend the Appeal in its entirety. Such a decision can be made once the Points of Claim are made.

It is recommended that Council's Solicitors Marsdens continue to defend this appeal.

SITE DIAGRAM:



**Lot 1
DP 786570**

<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 2483</p>	<p style="text-align: center;"><i>Tweed Shire Council</i> Lot 1 DP 786570 No. 87-89 Tweed Coast Road Hastings Point</p>		<p>PLANNING REFORMS UNIT Site Plan Scale: 1:10,000 Sheet: 1 of 1</p>
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OPTIONS:

1. Instruct Council's Solicitors (Marsdens) to continue to act on Council's behalf and defend Appeal Number 40785 of 2007 in the Land Environment Court.
2. Instruct Council's Solicitors to defend Appeal Number 40785 of 2007 in the Land Environment Court.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council will incur its own legal costs in relation to the subject Appeal, and potentially the costs of the applicant (Hastings Point Residents Group and Progress Association Incorporated) should the appeal be successful.

POLICY IMPLICATIONS:

Any policy implications will be reported to Council upon the determination of the matter by the NSW Land and Environment Court.

CONCLUSION:

It is recommended that Council engages Marsdens to act on Council's behalf for the Class 4 Appeal of DA06/0413 in the NSW Land & Environment Court Matter No. 40785 of 2007.

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. Council report 8 May 2007 (DW 1591820)
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P3 [PR-PC] Development Application DA07/0122 for livestock grazing at Lot 1 DP 1075645, Tweed Coast Road Chinderah - Class 1 Appeal

ORIGIN:

Development Assessment

FILE NO: DA07/0122 Pt1

SUMMARY OF REPORT:

Council has been served with a Class 1 Appeal for DA07/0122 that sought approval for livestock grazing at Lot 1 DP 1075645, Tweed Coast Road, Chinderah.

At the Planning Committee Meeting of 31 July 2007 it was

***"RECOMMENDED** that Development Application DA07/0122 for livestock grazing at Lot 1 DP 1075645, Tweed Coast Road Chinderah be refused as the proposed development is prohibited."*

Whilst the temporary use of this land for grazing cattle is innocuous there is a legal impediment to approving such a use. The land is within the area governed by State Government legislation for coastal protection (SEPP71). This legislation precludes Council's and developers from utilising the flexibility clauses in Council LEP's to gain development approval. The developer is seeking to use the permissibility of agriculture on an adjoining land parcel to gain approval for this use on land that is zoned solely for sewage treatment and turf farm purposes. The SEPP71 legislation precludes the flexibility in adjoining zones. Whilst cattle grazing is a relatively innocuous use of the land, there is the potential for the flexibility clause, if approved, to be utilised for seeking a range of uses which are not suitable on land that is zoned solely for sewage treatment or turf farm purposes.

It is recommended that Council defend this Appeal.

RECOMMENDATION:

That Council defends Appeal Number 10775 of 2007 in the Land & Environment Court.



REPORT:

Applicant: Gales - Kingscliff Pty Ltd
Owner: Gales - Kingscliff Pty Ltd
Location: Lot 1 DP 1075645 Tweed Coast Road, Chinderah
Zoning: 5(a) Special Uses
Cost: \$5,000

BACKGROUND:

On 31 July 2007 Council determined to refuse DA07/0122 as the proposed use (agriculture) was prohibited in the 5(a) Special Use Zone (Sewerage Treatment Plant/Turf Farm).

Gales-Kingscliff Pty Ltd have since filed a Class 1 Appeal against Tweed Shire Council in the NSW Land & Environment Court against the refusal of DA07/0122.

Despite this refusal and subsequent Appeal it was brought to Council's attention on 6 August 2007 that cattle were grazing on the property.

Council's Development Assessment Planner - Compliance Officer, has subsequently obtained evidence of the breach and taken photographic evidence for the NSW Land & Environment Court.

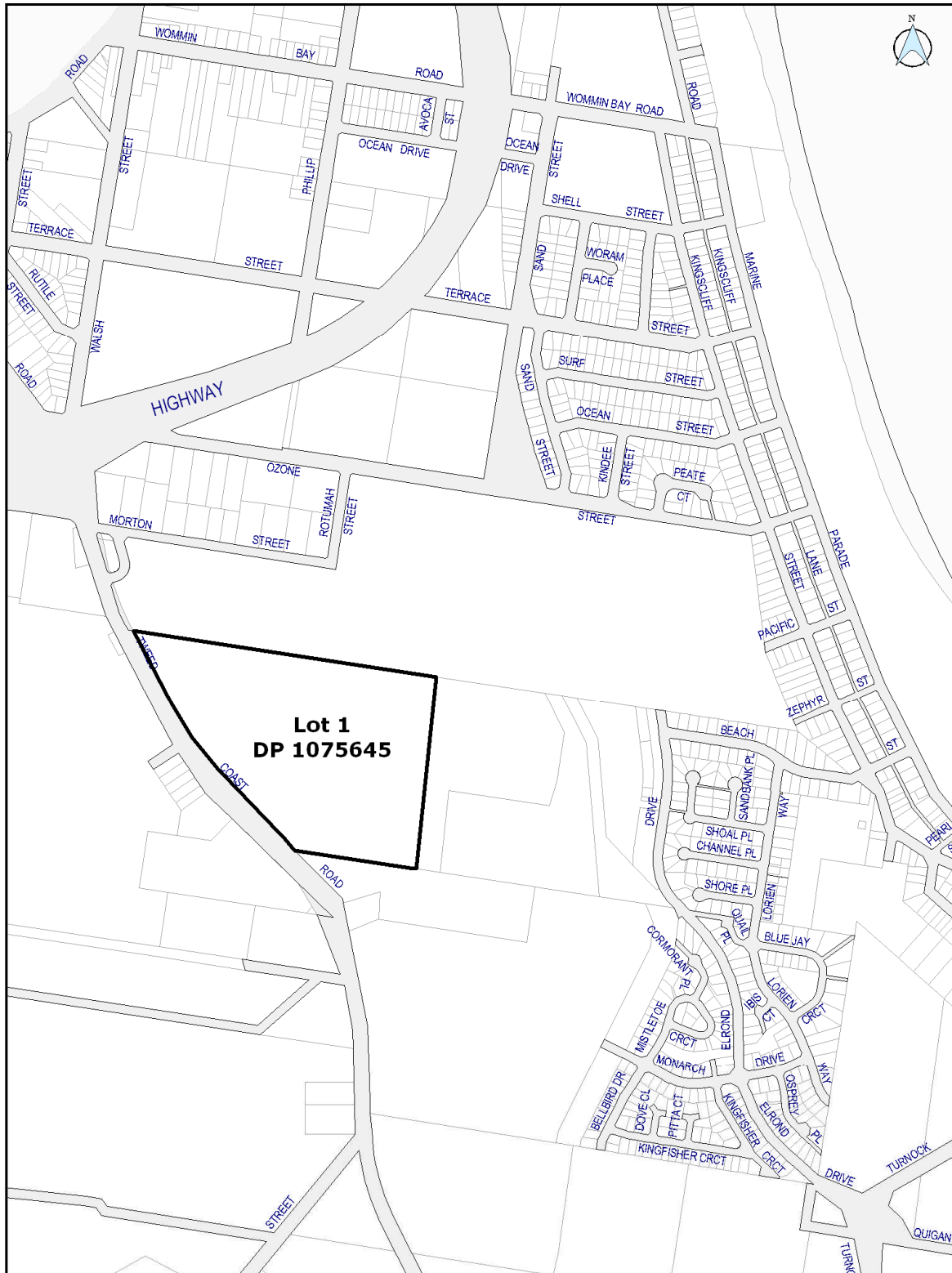
Council wrote to Gales-Kingscliff and requested an explanation for the unlawful use of the land, however, to date no explanation has been received. The applicant has requested that no action be taken pending the determination of the Appeal.


Given the urgency of the Court hearing, Council's Solicitors Home Wilkinson & Lowry have been briefed in this matter and have commenced Council's defence in this matter. Specifically this has involved challenging the applicants request for the proceeding to be expedited. The applicants grounds for this were that ...*"the subject land is lush grazing land in a time of drought and this required to be utilised for cattle grazing in that the consequence of not being able to utilise the subject land for grazing of cattle would be the forced sale of cattle at a time of falling and low cattle prices"*.

Following evidence from Council's Development Assessment Planner - Compliance Officer, Council's Solicitors opposed expedition of the matter as there were no grounds given the cows are already there. This motion was not pressed, and subsequently the matter has simply been stood over for a call over on 11 September 2007.

It is recommended that Councils Solicitors Home Wilkinson & Lowry continue to defend this Appeal.

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 Tel: (02) 6670 2409 Murwillumbah, NSW, 2484 Fax: (02) 6670 2489</p>	<p><i>Tweed Shire Council</i> Lot 1 DP 1075645 Tweed Coast Road, Chinderah</p>		<p>PLANNING REFORMS UNIT Site Plan</p>	
<p>File: N:\Munsys\A4P - SITE PLAN.Wor</p>	<p>Author: J.Batchelor</p>	<p>Date: 8/June/2007</p>	<p>Scale: 1:10,000</p>	<p>Sheet: 1 of 1</p>



OPTIONS:

1. That Council defends Appeal Number 10775 of 2007 in the Land & Environment Court.
2. Instruct Council's Solicitors to not actively pursue this Appeal Number 10775 of 2007 in the Land & Environment Court.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council will incur legal costs in relation to the subject Appeal and may have to meet the applicants costs if unsuccessful. The extent of costs should be limited as the Court will only determine whether the proposed use is permissible or not under the SEPP71 legislation.

POLICY IMPLICATIONS:

Any policy implications will be reported to Council upon the determination of the matter by the NSW Land and Environment Court.

CONCLUSION:

It is recommended that Council engages its Solicitors to act on Council's behalf for the Class 1 Appeal of DA07/0122 in the NSW Land & Environment Court Matter No. 10775 of 2007.

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. Council report 31 July 2007 (DW 1636433)
-

P4 [PR-PC] Development Application DA07/0274 for Alterations & Additions to Dwelling & 1.5m Front Fence with Fence Height Variation at Lot 104 DP 246488, No. 16 Compass Way, Tweed Heads

ORIGIN:

Building & Environmental Health

FILE NO: DA07/0274 Pt1

SUMMARY OF REPORT:

A Development Application and Construction Certificate were lodged with Council on 19 March 2007 to construct dwelling additions and a 1.5 metre high front fence on the abovementioned property.

The proposed addition to the dwelling involves the enclosure of the existing rear terrace to enlarge the kitchen, living and dining area (27m²), enlarging bedroom 3 to allow for an ensuite (8 m²), constructing a new master bedroom with walk-in-robe at rear of house (35m²), and minor alterations to the internal floor layout. In total, the dwelling additions will consist of approximately 70m², which is roughly 29 percent of the existing floor area.

The proposed additions are to be at the same floor level as the existing dwelling which is currently below the 1 in 100 year flood level of 3.10m AHD. A survey report from B&P Surveyors has been submitted to Council which identifies the finished floor level of the dwelling to be at RL 2.695.

Comments received from Council's Infrastructure Engineer suggested that the dwelling additions could be supported subject to the proposed master bedroom being raised to be above the 1 in 100 year flood level. This was discussed with the owners on site, however they advised that this was not favourable for numerous reasons as discussed later in this report.

The application was submitted to Council's Development Assessment Panel on Friday 27 July 2007 for assessment with a recommendation that the proposal be approved as submitted. The panel unanimously resolved that the Development Application for alterations and additions be approved subject to the floor level of the proposed master bedroom achieving Council's minimum floor level requirement of 3.1 metres AHD to comply with Council's Tweed Consolidated DCP Section A3. This resolution is consistent with the comments and recommendation received from Council's Infrastructure Engineer.

This decision was advised to the owners of the property who have since requested that the application be submitted to Council for further re-consideration to allow the dwelling additions to be constructed at the same floor level of the existing dwelling.

RECOMMENDATION:

That Development Application DA07/0274 for alterations & additions to dwelling & 1.5m front fence with fence height variation at Lot 104 DP 246488, No. 16 Compass Way Tweed Heads be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent.
[GEN0015]
2. The proposed swimming pool and retaining wall must be the subject of a separate development consent.
[GEN0035]
3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
[GEN0115]
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. The floor level of the proposed master bedroom is to achieve Council's minimum floor level requirement of 3.1 metres Australian Height Datum to comply with Council's Tweed Consolidated DCP Section A3.
[GENNS01]

PRIOR TO COMMENCEMENT OF WORK

6. 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]
7. 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]
8. Residential building work:
- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - * in the name and licence number of the principal contractor, and
 - * the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - * the name of the owner-builder, and
 - * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
 - (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

9. 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]

10. 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]

DURING CONSTRUCTION

11. 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]

12. 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]

13. 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]

14. **Building materials used in the construction of the dwelling additions and front fence are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.**
[DUR0395]
15. **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]
16. **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]
17. **The finished floor level of the building should finish not less than 225mm above finished ground level.**
[DUR0445]
18. **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**
 - **Removal of materials from the site by wind**
- [DUR1005]
19. **All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction.**
[DUR1025]
20. **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]
21. **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]
22. **All additional rainwater drains are to be connected to the existing rainwater disposal system or through properly jointed pipes to the street gutter. All PVC pipes are to have adequate cover and be installed in accordance with the provisions of AS/NZS3500.3.2.**
[DUR2335]

23. 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 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]

24. 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]

25. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.

[DUR2515]

26. 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 50⁰C.

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

[DUR2555]

27. The building is to be protected from attack by termites by approved methods in accordance with the provisions of Australian Standard AS 3660.1.

Note: Underslab chemical treatment will not be permitted as the only method of treatment unless the area can be retreated without major disruption to the building.

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

28. 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]

29. Prior to the issue of an occupation certificate,

- (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and

- (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
- (i) the method of protection; and
 - (ii) the date of installation of the system; and
 - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
 - (iv) the need to maintain and inspect the system on a regular basis.

[POC0235]

30. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

31. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.

[POC1055]

USE

32. The building is to be used for single dwelling purposes only.

[USE0505]

REPORT:

Applicant: Mrs LS Preston & Mr JW Preston
Owner: Mrs LS Preston
Location: Lot 104 DP 246488 No. 16 Compass Way, Tweed Heads
Zoning: 2(a) Low Density Residential
Cost: \$89,000

BACKGROUND:

A Development Application and Construction Certificate were lodged with Council on 19 March 2007 to construct dwelling additions and a 1.5 metre high front fence on the abovementioned property.

The allotment contains an original single storey cottage that was constructed in 1980 (BA 1065/80) and has an approximate enclosed floor area of 239 m². The dwelling also has a rear terrace that is located under the main roof of the dwelling which has an area of approximately 27 m²

The proposed additions to the dwelling involve the enclosure of the existing rear terrace to enlarge the kitchen, living and dining area (27m²), enlarging bedroom 3 to allow for an ensuite (8 m²), constructing a new master bedroom with walk-in-robe at the rear of the house (35m²), and minor alterations to the internal floor layout. In total, the dwelling additions will consist of approximately 70m², which is roughly 29 percent of the existing floor area.

The proposed additions will be at the same floor level as the existing dwelling which is currently below the 1 in 100 year flood level of 3.10m AHD. A survey report from B&P Surveyors has been submitted to Council which identifies the finished floor level of the dwelling to be at RL 2.695.

The application has been referred to Council's Infrastructure Engineer for comments. It was advised that Council's existing "15% of the floor area or 30m²" policy requirements for minor additions below the flood level should be enforced, as the objectives of this policy are to minimise exposure to property damage caused by flooding. It was further advised that to vary these requirements, it would expose Council to possible liability and would introduce an undesirable precedent.

A suggestion was made from Council's Infrastructure Engineer that in order to carry out the extensions, a split level design could be incorporated which involved raising the floor level of the master bedroom 400mm in height to achieve the required minimum floor level. This suggestion was forwarded on to the property owners who advised that such a proposal would not be feasible for the following reasons;

- The proposed renovation will have no detrimental effect on flooding in the locality.

- Raising the floor level of the master bedroom to comply with the new required 1 in 100 year flood level would make no difference to potential damage from any major flooding as the remainder of the dwelling is below the 1 in 100 year flood level.
- By raising the master bedroom floor 400mm, the ability to work with existing roof lines regarding hips and valleys and ceiling levels will be greatly effected. Furthermore, the 2 roofs will not marry together and we will be subjected to extra construction costs for an undesirable finish.
- Whilst the existing finished floor level of RL 2.695 is below the required minimum finished floor level of 3.10m AHD, the existing level is still above the predicted 1 in 100 year flood level of 2.60m AHD, hence inundation in a 1 in 100 year flood event is unlikely.
- A split level design would create safety issues, in particular trip hazards, with relation to the master bedroom and accessing the dining/family room area as per the plan.
- My husband has ongoing knee problems and will be having knee surgery later this year.
- A split level design would impact on the functionality of the adjacent outdoor areas and is aesthetically undesirable.
- A split level design would be undesirable for wheelchair access of family and friends

In a submission to Council made by the owners, dated 16 July 2007, the owner asked that Council give their Development Application the same consideration that was given to a more significant dwelling addition at number 13 Compass Way, in which consent was granted (DA06/0893) to extend the dwelling at the original floor level which is below 3.10m AHD.

Further research into this application (DA06/0893) has identified that approval was granted to increase the habitable floor area of the dwelling to be at the same floor level of the existing dwelling which is 2.77m AHD. In total, the additional habitable floor area of the extension consisted of 99.85m², which was approximately 51% of the original floor area.

From investigation of the file, it appears that the flooding issues were identified during the initial assessment of the application, however as there were several other complex matters that required assessment, it appears that Council was remiss in finalising the floor level requirements for the additions. Although this oversight is unfortunate, it does not justify further non-compliance in this application or other future applications.

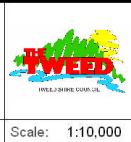
In consideration of the application, it should be noted that the subject area is one in which people are increasingly looking to carry out renovations and additions to the original dwellings to bring them up to a more modern standard. Should Council approve this subject application it may set a precedent for other dwelling additions below the 1 in 100 year flood level which are beyond the scope of Councils "15 percent or 30m²" policy for minor additions.

SITE DIAGRAM:



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Tweed Shire Council
Lot 104 DP 246488
No. 16 Compass Way, Tweed Heads



PLANNING REFORMS UNIT
Site Plan

File: N:\Munsys\A4P - SITE PLAN.Wor Author: B. Ingram Date: 29/Aug/2007 Scale: 1:10,000 Sheet: 1 of 1

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 Environmental Planning Instrument in force is the Tweed Local Environmental Plan 2000

The subject land is zoned 2(a) low density residential, within which the proposal is permissible subject to Council's consent.

Clause 16 – Height of Buildings - The proposal maintains the single storey design of the dwelling therefore satisfying the maximum three storey height limit.

Clause 31 – Development adjoining water bodies – The site adjoins the mean high water mark of a water body. It is considered that the proposed development will have minimal impacts on the aquatic environment and will not impact on public access to the waterway. The proposed development is further considered to be consistent with the aims of the policy.

Clause 34 – Flooding - The site is identified as being in a flood prone area. The proposal will not increase the effect of flooding on the wider community.

Clause 35 – Acid Sulfate Soils - The site is identified as being in a Class 3 ASS area. As the construction of the dwelling additions will not extend more than 1 metre below the ground, no impacts on acid sulfate soils are anticipated, hence satisfying the objectives of the planning instrument.

North Coast Regional Environmental Plan 1988State Environmental Planning Policies

SEPP 71 – Coastal Protection - The site is located within the coastal zone. Having regard to Clause 8 of SEPP 71 and based on the nature and scale of the development, the proposal is unlikely to have any adverse impacts in this coastal location. The proposed development is considered compatible with the intent for the development of the locality.

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

There are no Draft Environmental Planning Instruments applicable to this application

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

Development Control Plan Part A3 - Development of Flood Liable Land

In respect of DCP 5, the site is identified as being in a flood prone area. The 1 in 100 year flood level is 2.60 m AHD with a required floor level of 3.1m AHD (as per latest amendments in March 2006). This application proposes the enclosure of the existing rear terrace to enlarge the kitchen, living and dining area (27m²), enlarging bedroom 3 to allow for an ensuite (8 m²), constructing a new master bedroom with walk-in-robe at rear of house (35m²), and minor alterations to the internal floor layout, all of which are to be at the same floor level as that of the existing dwelling house. This additional habitable floor area totals approximately 70 m² and 29% of the original floor area.

The owners have written to Council requesting a variation to the requirements of DCP 5 for the following reasons;

- The proposed renovation will have no detrimental effect on flooding in the locality.
- Raising the floor level of the master bedroom to comply with the new required 1 in 100 year flood level would make no difference to potential damage from any major flooding as the remainder of the dwelling is below the 1 in 100 year flood level.
- By raising the master bedroom floor 400mm, the ability to work with existing roof lines regarding hips and valleys and ceiling levels will be greatly affected. Furthermore, the 2 roofs will not marry together and we will be subjected to extra construction costs for an undesirable look.
- Whilst the existing finished floor level of RL 2.695 is below the required minimum floor level of 3.10m AHD, the existing level is still above the predicted 1 in 100 year flood level of 2.60m AHD, hence inundation in a 1 in 100 year flood event is unlikely.
- A split level design would create safety issues, in particular trip hazards, with relation to the master bedroom and accessing the dining/family room area as per the plan.
- My husband has ongoing knee problems and will be having knee surgery later this year.
- A split level design would impact on the functionality of the adjacent outdoor areas and is aesthetically undesirable.
- A split level design would be undesirable for wheelchair access of family and friends

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

There are no matters prescribed by the Regulations that apply to the proposal

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

The development is anticipated to have similar impacts to that which would be envisaged for the construction of dwelling additions in a residential area. The proposal is consistent with other developments in the locality and based on the nature and scale of the development, the proposal is considered unlikely to result in any significant adverse impacts on the existing natural or built environment.

(c) Suitability of the site for the development

The site is part of an existing residential subdivision and is considered to be suitable for the proposed development. Furthermore the proposal is considered to be consistent with the type of development intended for the site. The site is identified as being in a flood prone area and it is considered that the proposal will not increase the effect of flooding on the community.

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

In accordance with DCP42, the development was notified to the adjoining property owners. During the two week notification period no submissions were received.

(e) Public interest

The proposed development is considered to be consistent with the surrounding uses and has been designed to be compatible with the existing development, hence the proposal is considered not to be contrary to the wider public interests.

OPTIONS:

1. Approve the Development Application as submitted to allow the proposed dwelling additions to be constructed at the same level as the existing dwelling which is below the minimum required floor level of 3.10 metres AHD.
2. Approve the Development Application as per the decision made by Council's Development Assessment Panel, by which the floor level of the proposed master bedroom is to achieve Council's minimum floor level requirement of 3.1 metres AHD.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council has a long standing policy of permitting 'minor' extensions to dwellings with existing floor levels below the adopted habitable floor level, provided they do not exceed 15% of the floor area or 30m², whichever is lesser. The objective of this policy is to minimise exposure to property damage from flooding, which is supported by State Government Policy. It is considered that to vary these requirements would potentially expose Council to liability and would introduce undesirable precedents.

POLICY IMPLICATIONS:

In consideration of the application, it should be noted that the subject area is one in which people are increasingly looking to carry out renovations and additions to the original dwellings to bring them up to a more modern standard. Should Council approve this subject application it may set a precedent for other dwelling additions below the 1 in 100 year flood level which are beyond the scope of Councils 15% or 30m² policy for minor additions.

CONCLUSION:

With the exception of the minimum floor level requirement for the proposed additions, the development is consistent with Council's policies and regulations and is considered worthy of approval. However, given that the proposal may set a precedent in the area with regards to dwelling additions below the flood level, it is considered that such an approval should be granted by Council to either; allow the dwelling additions to be constructed at the same level as the existing dwelling, as per the request of the owners; or allow the dwelling additions to be constructed with the master bedroom and ensuite raised to be above the minimum required floor level as the recommendation from Council's Infrastructure Engineer.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.
