



AGENDA

PLANNING COMMITTEE MEETING Tuesday 13 February 2007

Chairman: Ms Lucy Turnbull

**Administrators: Mr Frank Willan
Ms Lucy Turnbull
Mr Max Boyd AM**

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ITEMS FOR CONSIDERATION OF THE COMMITTEE:

ITEM	PRECIS	PAGE
REPORTS THROUGH GENERAL MANAGER		
REPORTS FROM DIRECTOR PLANNING & DEVELOPMENT		
1	[PD-PC] Development Application DA06/1462 for Alterations to Unit 301 at Lot 39 SP 77096, No. 39/2-6 Pandanus Parade Cabarita Beach	Refer Agenda 1
2	[PD-PC] Development Application DA06/1189 for Replacement of a Traffic Bridge Incorporating a Pedestrian/Cycleway Path over Cudgen Creek at Lot 1 DP 1095491, Casuarina Way, Kingscliff	Refer Agenda 1
3	[PD-PC] Development Application DA06/1217 for the Demolition of Existing Building and Erection of Six (6) Storey Multi-Dwelling Housing Comprising 6 x Two-Bedroom Apartments and 3 x Three-Bedroom Apartments With Basement Car Parking at Lot 96 DP 237806,	Refer Agenda 1
4	[PD-PC] Development Application DA06/1027 for the Demolition of Existing Structures and Establishment of a Service Station at Lot 1 DP 207188; Lot 1 DP 780342; Lot 1 DP 780345; Lot 1 DP 780344, No. 98-102 Minjungbal Drive Tweed Heads South	Refer Agenda 1
5	[PD-PC] Development Application DA06/0705 for a 2 Lot Subdivision and Erection of Dwelling and Swimming Pool on Each Lot at Lot 3 DP 214331, No. 13 Moss Street, Kingscliff	Refer Agenda 1
6	[PD-PC] Development Application DA06/1149 for an overpass associated with Tugun Bypass at Boyd Street and Cobaki	347
7	[PD-PC] Development Application DA06/0847 for a 5 Lot Subdivision at Lot 22 DP 617126, No 26-30 Wollumbin Street, Tyalgum	399
8	[PD-PC] Draft LEP 2000 Amendment 75 – Reclassification of Land on Lot 1 DP1087664, Bottlebrush Drive, Pottsville	411
9	Development Application DA06/0266 for a Mortuary and Crematorium and LEP Amendment at Part Lot 704 DP 1000580, No. 9394 Tweed Valley Way, Chinderah	415

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6 [PD-PC] Development Application DA06/1149 for an overpass associated with Tugun Bypass at Boyd Street and Cobaki

ORIGIN:

Development Assessment

FILE NO: DA06/1149 Pt1

SUMMARY OF REPORT:

A development application has been received for an overpass bridge of the Tugun bypass road and rail corridor. The overpass straddles the Queensland/ NSW state border and will join Boyd Street on the Queensland side and an unnamed road reserve on the NSW side of the border. The overpass structure is 700m long with approximately 300 metres of the overpass located in NSW.

RECOMMENDATION:

That Development Application DA06/1149 for a Boyd Street overpass associated with Tugun Bypass at Boyd Street and Sandy Lane, Cobaki Lakes be approved subject to the following conditions: -

GENERAL

- 1. The development shall be completed in accordance with the Boyd Street Statement of Environmental Effects dated September 2006 prepared by Parsons Brinckerhoff and Plan No. 3003181-BYD-010-1501 Issue 01 dated 22.9.06 and Plan No. 3003181-SK-440 Revision 02 dated 4.8.06.**
- 2. 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.**
[GEN0005]
- 3. Maintenance of existing drainage through the provision of six 1.2 m x 2.4 m proposed culverts. Drainage plans to include water quality measures for the treatment of pavement runoff other than via grass swales due to the sensitive vegetation, habitats and species in the area.**
[GEN0135]
- 4. All works for the proposed Boyd St overpass project are to be carried out in accordance with the Tugun Bypass Environmental Management Plans and sub-plans prepared by Pacific Link Alliance to be completed in conjunction with the bypass.**

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

[PCC0285]

6. Permanent stormwater quality treatment shall be provided for all stormwater discharges into Tweed Shire and/or the Cobaki Lake catchment in accordance with the following:

- (a) All road runoff shall be directed to approved stormwater treatment measures in the Tugun Bypass drainage system, provided there is demonstrated spare capacity in these devices to accept the additional flows; or
- (b) Stormwater treatment devices shall be installed in the overpass drainage system to treat road runoff for sediment, hydrocarbon, nutrient and gross pollutants. Proprietary treatment devices must be sized in accordance with Section D7.12 of Council's Development Design Specification D7 - Stormwater Quality, and must be capable of treating, as a minimum, all stormwater flows up to the ARI 3 month storm (deemed to be 40% of the ARI 1 year storm). Higher flows must not result in the remobilisation of captured pollutants from treatment devices.
- (c) an application under Section 68 of the Local Government Act shall be lodged with Council and shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development.

[PCC1105]

7. Application for works that involve any of the following:-

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

will not be approved until prior separate approval to do so has been granted by Council under section 68 of the Local Government Act 1993.

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

[PCC1145]

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

- (a) Application under Section 68 of the Local Government Act is to be submitted to Council and must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

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

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

will not be approved until prior separate approval to do so has been granted by Council under section 68 of the Local Government Act 1993.

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

[PCC1145]

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

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

[PCC1155]

11. Permanent stormwater quality treatment shall be provided for all stormwater discharges into Tweed Shire and/or the Cobaki Lake catchment in accordance with the following:

- (a) All road runoff shall be directed to approved stormwater treatment measures in the Tugun Bypass drainage system, provided there is demonstrated spare capacity in these devices to accept the additional flows; or
- (b) Stormwater treatment devices shall be installed in the overpass drainage system to treat road runoff for sediment, hydrocarbon, nutrient and gross pollutants. Proprietary treatment devices must be sized in accordance with Section D7.12 of Council's Development Design Specification D7 - Stormwater quality, and must be capable of treating, as a minimum, all stormwater flows up to the ARI 3 month storm (deemed to be 40% of the ARI 1 year storm). Higher flows must not result in the remobilization of captured pollutants from treatment devices.

[PCC1105]

PRIOR TO COMMENCEMENT OF WORK

12. Prior to the commencement of work, the following detail shall be submitted to Council;

- (a) evidence that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared in accordance with either:-
 - i. Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
 - ii. AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
 - iii. WorkCover Regulations 2000
- (b) Where earthworks result in the creation of embankments and/or cuttings greater than 1m high and/or slopes within allotments 17° or steeper, such slopes shall be densely planted in accordance with a detailed landscaping plan.

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

- i. Contours and terraces where the height exceeds 1m.
- ii. Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- iii. Densely plant with sub-tropical (rainforest) native and exotic species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.

- iv. **Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.**
- (c) **A traffic control plan in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2 shall be prepared by an RTA accredited person shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.**
- (d) **Copies of the following design detail shall be submitted to Council.**
- i. **detailed engineering plans and specifications. The detailed plans shall include:**
- **earthworks**
 - **roadworks/pavement design/furnishings**
 - **stormwater drainage**
 - **landscaping works**
 - **sedimentation and erosion management plans**
 - **location of all service conduits (water, sewer, Country Energy and Telstra)**

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000

The applicant shall provide certification from an experienced engineer / engineers in the various disciplines confirming the works / structures comply with adopted standards and good engineering practice.

13. **Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like, shall be installed/operated in accordance with those conditions or plans.**

[PCW0015]

14. **A Fauna Management Plan prepared by a qualified person and submitted and approved by Council's Environmental Scientist prior to commencement of work. The plan must describe measures to mitigate fauna mortality pre, during, and post construction and include:**
- **measures outlined within the Roads and Traffic Authority of NSW policies and guidelines to prevent fauna mortality during road construction and management;**

- measures contained within the Tugun Bypass Construction Environmental Management Plans including pre clearing protocols for fauna;
 - Provision of a dedicated fauna underpass under the western section of the proposed overpass that measures 4.0 m x 1.8 m and includes culvert features that will facilitate the movement of the Long-nosed Potoroo and threatened frog populations;
 - construction and operational stage fauna exclusion fencing (including frog exclusion fencing) linking to fauna underpass structures and consistent with designs employed in the Tugun Bypass project; and
 - ongoing maintenance regimes and commitments for fences and structures.
15. A Flora Management Plan prepared by a qualified person and submitted and approved by Council's Environmental Scientist prior to commencement of work. The plan must describe existing vegetation and species within and adjacent the construction footprint and include:
- procedures for clearing of vegetation, limiting soil disturbance, and protecting adjacent terrestrial and aquatic vegetation and habitats;
 - procedures for protecting wallum heath up to and adjacent fauna movement structures;
 - landscaping and rehabilitation methods for disturbed areas implemented immediately following construction; and
 - plans for replacing hollows where these are removed through vegetation clearing for the proposal.
 - provision for 4000m² of compensatory Scribbly Gum Woodland planting and 1000m² of Compensatory Paperbark planting.
16. A Long-nosed Potoroo Integrated Plan of Management prepared in consultation with relevant stakeholders and a qualified wildlife biologist, and submitted and approved by Council's Environmental Scientist prior to commencement of work. This plan must describe, but is not limited to:
- fauna crossings and fauna exclusion fencing, predator control programs, fire management, and revegetation;
 - time lines and performance indicators for all management measures;
 - defined roles and responsibilities; and
 - reporting and review mechanisms, with specific provision for a 5 year public review.
 - design options for the construction of the future road incorporating management for the Long Nosed Potoroo.

17. An Acid Sulfate Management Plan submitted to Council and approved by Council's Environmental Scientist prior to commencement of work. Plans should specifically address changes in pH and activation of ASS resulting from the proposal which may potentially impact on adjacent sensitive terrestrial and aquatic vegetation, habitats, species and receiving waters.
18. A Heritage Management Plan submitted and approved by Council's Environmental Scientist prior to commencement of work. This plan must include an appropriate level of aboriginal consultation and engagement regarding Indigenous heritage mitigation measures.

DURING CONSTRUCTION

19. During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans.

[DUR0015]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0215]

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

[DUR0795]

22. All work associated with this approval is to be carried out so as not to impact on 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]

23. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742.3-2202 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

24. Before the commencement of the relevant stages of road construction, reports shall be submitted to Council from a Registered NATA Consultant demonstrating.

- (a) That the pavement has been designed and constructed in accordance with Tweed Shire Councils adopted Construction and Design Specification, D2.
- (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils adopted Design and Construction Specifications, C242-C245, C247, C248 and C255.
- (c) That site fill areas have been compacted to the specified standard.
- (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.

[DUR1805]

25. During the relevant stages of road construction, reports shall be submitted to the PCA by a Registered NATA Geotechnical firm demonstrating.

- (a) That the pavement layers have been compacted in accordance with Councils adopted Design and Construction Specifications.
- (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.

[DUR1825]

26. 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]

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

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

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

[DUR2375]

28. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act.

[DUR2625]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

29. Prior to the use of the structure/works Works as Executed Plans shall be submitted in accordance with the provisions of DCP16 - Subdivisions Manual and Councils adopted Design and Construction Specification.

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

- (a) the plans accurately reflect the Work as Executed.

[PSC0735]

30. The applicant shall provide Council with certification from an experienced engineer / engineers in the various disciplines confirming the works / structures comply with approved plans and specifications.

31. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council prior to the use of the proposed structure / works.

[PSC0855]

GENERAL TERMS OF APPROVAL FOR A LICENSE UNDER THE WATER ACT 1912

- **Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, an approval under Part 5 of the Water Act 1912 must be obtained from the Department. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.**
- **An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act 1912.**
- **When the Department grants an approval, it may require any existing approvals held by the applicant relating to the land subject to this consent to be surrendered or to let lapse.**
- **All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.**
- **All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.**
- **The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.**
- **All vegetation clearing must be authorised under the Native Vegetation Conservation Act 1997, if applicable.**
- **The approval to be granted may specify any precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.**
- **A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.**
- **If and when required by the Department, suitable devices must be installed to accurately measure the quantity of water extracted or diverted by the works.**
- **All water measuring equipment must be adequately maintained. It must be tested as and when required by the Department to ensure its accuracy.**

- **Works for construction of bores must be completed within such period as specified by the Department.**
- **Within 2 months after the works are completed the Department must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are notified in the approval.**
- **Officers of the Department or other authorised persons must be allowed full and free access to the works for the purpose of inspection and testing.**
- **Water shall not be pumped from the works for any purpose other than dewatering for construction purposes.**
- **The use of water shall be conditional on no tailwater drainage being discharged into or onto -**
 - any adjoining public or crown road**
 - any crown land**
 - any river, creek or watercourse**
 - any groundwater aquifer**
 - any area of native vegetation**
 - any wetlands**
- **The work shall be managed in accordance with the constraints set out in the electronic documentation provided to this Department by the Pacific Link Alliance Environmental Manager in the form of an email dated 2/2/07 at 11:00am.**
- **The work shall be managed in accordance with the constraints set out in the Statement of Environmental Effects for the proposed development produced by Parsons Brinkerhoff dated September 2006.**
- **The volume of groundwater extracted as authorised must not exceed 5 megalitres.**
- **The Department has the right to vary the volumetric allocation or the rate at which the allocation is taken in order to prevent the overuse of an aquifer.**
- **The licence shall lapse within six (6) months of the date of issue of the licence.**

DEPARTMENT OF LANDS CONDITIONS

1. **Consent of the Department should be sought for the acquisition of any Crown land affected by the proposed works. Acquisition should proceed pursuant to the Land Acquisition (Just Terms Compensation) Act 1991 prior to commencement of works.**
2. **No water should be drained or directed on to or diverted to Crown land either during or after construction of the proposed overpass or during operation of the road.**
3. **No clearing or damage to vegetation on Crown land or disturbance of soil on Crown land is permitted.**
4. **Crown land should not be used for access or any other purpose without authority.**

REPORT:

Applicant: Queensland Department of Main Roads
Owner: Tweed Shire Council
Location: Unnamed Road Cobaki
Zoning: 7(a) Environmental Protection (Wetlands and Littoral Rainforests)
Cost: 3,000,000.00.

Background

Tweed Shire Council originally gave consideration to the provision of an overpass within DA 92/315. The detail of the future structure was again identified within development application S94/194.

The proposed structure forms part of the Cobaki Lakes development and road network linking the future Sandy Lane / Cobaki Parkway to the broader areas of West Tweed Heads and Bilambil Heights.

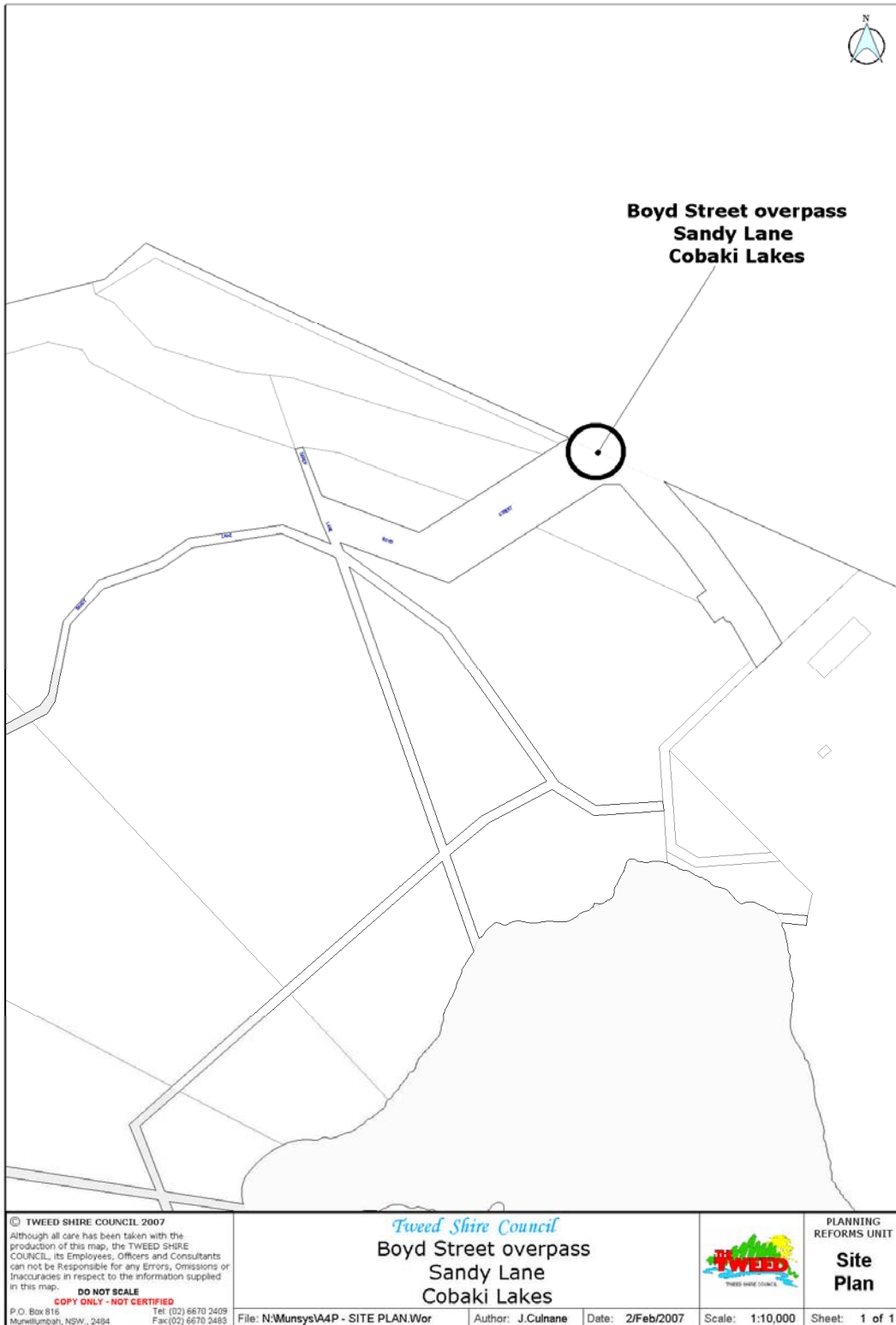
The applicant has advised that as the approved alignment of the Tugun Bypass has moved to the east of the former corridor, the location and design of the Boyd Street overpass has been amended and as such a new development application is required.

Proposal

The applicant seeks Council consent to construct a two lane concrete bridge structure, associated earthworks, drainage structures and fauna underpass. The western approach to the structure, bridge abutment, part bridge deck, earthworks, fauna underpass and sections of the drainage system are located within Tweed Shire Council Local Government Area. However, as the NSW / QLD border runs north / south through the project, the remainder of the overpass is located within the Gold Coast City Council local government area on the Queensland side of the border.

The applicant also provides reference to a possible future upgrade of the overpass to a full diamond interchange providing access from Boyd Street to the bypass road. The upgrading to an interchange including on and off ramps would be subject to separate assessment and approval.

SITE DIAGRAM



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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 7(a) Environmental Protection (Wetlands and Littoral Rainforests) under the provisions of the Tweed LEP 2000. Roads are permissible in the zone however Council may only grant consent if the provisions of clause 8 (2) of the LEP are satisfied.

Clause 8(2) of the LEP is as follows-

- (2) *The consent authority may grant consent to development specified in Item 3 of the Table to clause 11 only if the applicant demonstrates to the satisfaction of the consent authority that:*
- (a) *the development is necessary for any one of the following reasons:*
- (i) *it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,*
- (ii) *it meets an identified urgent community need,*
- (iii) *it comprises a major employment generator, and*
- (b) *there is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity, and*
- (c) *the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and*
- (d) *the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.*

The objectives of the zone are as follows-

Primary objectives

- *to identify, protect and conserve significant wetlands and littoral rainforests.*

- *to prohibit development which could destroy or damage a wetland or littoral rainforest ecosystem.*

Secondary objectives

- *to protect the scenic values of wetlands and littoral rainforests.*

The aims of the LEP are as follows-

- (a) *to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan which was adopted, after extensive community consultation, by the Council on 17 December 1996, the vision of which is:*
- “The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”, and*
- (b) *to provide a legal basis for the making of development control plans which provide more detailed local planning policies and other provisions that provide guidance for future development and land management, such as provisions recommending the following:*
- (i) *that some or all development should be restricted to certain land within a zone,*
- (ii) *that specific development requirements should apply to certain land in a zone or to a certain type of development,*
- (iii) *that certain types or forms of development or activities should be encouraged by the provision of appropriate incentives, and*
- (c) *to give effect to and provide reference to the following strategies and policies adopted by the Council:*
- Tweed Shire 2000+ Strategy
Pottsville Village Strategy, and
- (d) *to encourage sustainable economic development of the area of Tweed compatible with the area’s environmental and residential amenity qualities.*

Clause 8 (2) (a) (i) is satisfied as the overpass provides a critical access to the north for existing and future urban development within the Tweed. Release areas of Cobaki and Bilambil Heights are dependant on access to the north via Boyd Street as Kennedy Drive is at capacity with existing development approvals.

Clause 8(2) (b)

The overpass is to be located within an existing cleared road reserve on either side of the border. The site is the most appropriate location for the overpass.

Clause 8(2) (c)

The overpass will form part of the road network from Cobaki Lakes to the north of the Shire and into the southern Gold Coast area. The overpass is located adjacent the realigned Pacific Highway currently under construction and the proposed railway line extension from Robina to Coolangatta Airport and the Airport itself. The overpass is consistent with existing and future development.

Clause 8(2) (d)

The proposal is consistent with the aims of the LEP as the overpass provides an essential transport link for Council's existing and planned urban development. The objectives of the zone are satisfied as the overpass is substantially located within an existing cleared road reserve with relatively minimal disturbance to vegetation. There are no littoral rainforests in the locality and significant wetlands are not disturbed by the overpass.

Clause 25 requires Council to consider the impacts of the development on flora and fauna, the watertable and the impacts on the wetlands of clearing, draining excavating or filling. A plan of management providing mitigation measures for any adverse impacts is also required to be considered. These matters have been considered and comment is provided in section (b) below.

Clause 33 relates to obstacles to aircraft in the vicinity of the airport. The overpass is approximately 10.5m above the natural ground level and will not be an obstacle to aircraft.

Clause 38 Future road corridors. The site is a designated future road corridor and the objective of the clause is to cater for the alignment of, and development in proximity to, future roads. As the proposal is for a road the objective of the clause is satisfied.

Clause 39 requires consideration of contaminated land. Comments regarding contaminated land are provided in section (b) below.

Clause 44 requires consideration of aboriginal heritage. The proponent advises that known objects /areas of cultural heritage significance within the proposed construction footprint were not identified during impact assessment. A Cultural Heritage Management Plan for the Tugun Bypass has been prepared and actions described in this plan will be implemented during clearing and grubbing and/or unexpected objects of significance identified. Aboriginal cultural monitors from the Tweed Byron Local Aboriginal Land Council and the Eastern Yugambah Limited will be invited to be present during clearing and grubbing works.

North Coast Regional Environmental Plan 1988

Clause 15 requires consideration wetlands and fishery habitats. The overpass structure is located approximately 900m from the Cobaki Broadwater but is within the catchment of the Cobaki Broadwater. Stormwater runoff is the only relevant issue to the waterway. Conditions have been imposed regarding stormwater water quality. NSW fisheries have indicated that the application does not need and approvals under the Fisheries Management Act.

Clause 29A requires consideration of the impact of clearing in an environmental protection zone on wildlife habitat, the scenery and erosion and sedimentation. Clearing is discussed below. The site does not have high scenic values given the existing development in the locality and erosion and sedimentation controls are proposed and appropriate conditions are recommended.

Clause 32B requires consideration of the NSW Coast Government Policy, the Coastline Management Manual, the North Coast Design Guidelines and overshadowing of the beaches and open space. The proposed development is not contrary to any of the above documents and the overpass does not overshadow any beachfront areas.

State Environmental Planning Policies

SEPP-44 Koala Habitat Protection- the site has been identified as potential koala habitat but not core koala habitat accordingly a management plan is not required and the provisions of the SEPP have been satisfied.

SEPP-71 Coastal Protection-clause 8 of the SEPP requires Council to consider the following matters-

- (a) the aims of this Policy set out in clause 2,
- (b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,

- (c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,
- (d) the suitability of development given its type, location and design and its relationship with the surrounding area,
- (e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,
- (f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,
- (g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,
- (h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats
- (i) existing wildlife corridors and the impact of development on these corridors,
- (j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,
- (k) measures to reduce the potential for conflict between land-based and water-based coastal activities,
- (l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,
- (m) likely impacts of development on the water quality of coastal waterbodies,
- (n) the conservation and preservation of items of heritage, archaeological or historic significance,
- (o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,

- (p) only in cases in which a development application in relation to proposed development is determined:
 - (i) the cumulative impacts of the proposed development on the environment, and
 - (ii) measures to ensure that water and energy usage by the proposed development is efficient.

The majority of the above matters are satisfied due to the distance of the overpass from the coastline and coastal waterbodies. Conditions have been imposed regarding threatened species and stormwater quality. The site is suitable given it is to be located within an existing road reserve and designated road corridor. The statement of environmental effects indicates that the cumulative impact of the by-pass, nearby residential development and the increase in traffic is likely to place the Long-Nosed Potoroo population at risk of extinction. However the overpass structure itself is unlikely to affect the population. A committee has been formed regarding management of the potoroo and consists of the following stakeholders: -

Lewis Ecological (Consultant)
Tweed Byron Local Aboriginal Land Council
Tweed Shire Council (Environmental Scientist)
LEDA – Ecologist
LEDA – Project Manager
DEC - Senior Threatened Species Officer
RTA
PacificLink Alliance (Environment Manager)
Queensland EPA
Commonwealth Department of Environment and Heritage
Manager – Cattle Tick Program
Ecos Environmental (Botanist)
NSW Department of Lands (Project Manager)
PacificLink Alliance (Ecologist)
Community Safety Officer
Rural Lands Protection Board

A condition has been imposed regarding preparation and submission of fauna and potoroo management plan prior to construction of the overpass.

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

Draft LEP 2000 Amendment 21 Vegetation Management is not relevant to this site given the 7(a) zoning of the land.

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

DCP-17 Cobaki Lakes requires connection from the Cobaki Lakes development through to Boyd Street at stage 1 of the development.

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

The subject site is within the coastal zone and the Government coastal policy applies. The overpass is not inconsistent with the Policy.

(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**

Council's Environmental Scientist has assessed the proposal and has made the following comments-

Ecological assessment of Development Application DA06/1149 Boyd Street Overpass including review and consideration of comment from the Department of Environment and Conservation and public submission to the proposal

The Boyd Street Overpass proposal involves an upgrade of the existing Boyd Street access track to include an overpass over the Tugun Bypass. The proposal is described within the Boyd Street Overpass Statement of Environmental Effects. In assessing the proposal, the following documents were also considered:

- *Review of Design Report Boyd Street Overpass, Report No: DR-103-RD for the Tugun Bypass;*
- *Pacific Link Alliance Tugun Bypass Environmental Management Plans Construction (Volumes 1 –3);*
- *Tugun Bypass Environmental Impact Statement;*
- *Tugun Bypass Submissions Report to the Department of Planning, October 2005;*
- *Boyd Street Overpass referral to the Commonwealth Department of Environment and Heritage (referral number EPBC 2006/3094);*

Comment from the Department of Environment and Conservation (DEC) and one public submission have also been reviewed here as part of the ecological assessment of the proposal. Details of these are as follows:

- Department of Environment and Conservation (DEC) Comment prepared by Jon Keats, Head Industry and Waste Unit, North Coast, Environment Protection and Regulation, Department of Environment and Conservation (DEC).
- Public Submission: - Richard Murray, Secretary, Tweed Heads Environment Group Inc. (THEG).

DEC comment was received following referral of the proposal while the public submission was received following public notification of the proposal.

Summary of ecological issues

The SEE has identified that the proposed development site contains habitat for threatened species and communities listed on schedules of the Threatened Species Conservation Act 1995 (TSC Act). The SEE and response to the proposal note that in particular, both the Cobaki Lakes Endangered Long-nosed Potoroo population and the Wallum Froglet have been identified in the immediate vicinity of the site. Incidentally, two additional species listed under Schedule 2 of the TSC Act, the green-thighed frog and the Coastal Planigale, recently recorded during monitoring studies (Tugun Bypass Submission Report), also occur in the immediate vicinity of the proposal. Both species were overlooked within the SEE for the Boyd Street Overpass and within responses received on the project. Threatened species and communities may be susceptible to habitat clearing, and changes in drainage and water quality (including pH), as a result of the proposal.

The existing constructed access road linking Boyd Street to the Cobaki Lakes development already creates significant ecological impacts such as habitat fragmentation and isolation, barrier effects for local species movements, and suspected changes to local drainage in the area. These impacts are exacerbated through edge effects. Studies for the Tugun Bypass EIS found that the Long-nosed Potoroo is particularly susceptible to the impacts outlined above. In fact, the DEC response outlines that the Boyd Street access track is the definitive impact that resulted in its' subsequent listing as an endangered population under the TSC Act.

For the Long-nosed Potoroo population, and other threatened species in the area, the construction of an overpass is unlikely, in isolation, to cause further impact to this population. That is, the overpass footprint does not present a substantial increase in total habitat clearing. However, of concern are the cumulative impacts to this population (identified in the SEE and raised by DEC). Consequently, the management of the area for conservation, and in particular for the Long-nosed Potoroo population, is considered essential as part of any upgrading proposal. An upgrading to a four lane overpass and interchange in the future (alluded to in the SEE and discussed in the THEG submission) may or may not increase the footprint area, however, the cumulative impacts would again be the primary issue; although as pointed out by the applicant, this would be the subject of a separate application.

The applicant has recognised the potential cumulative effects on the Potoroo Population within the 7-part test presented in the Boyd Street Overpass SEE. From the information provided it is difficult to determine whether a Species Impact Statement (SIS) should be pursued. It is however recognised that the area in question has been well studied and an SIS is unlikely to provide new information. In the absence of an SIS it is imperative that a detailed and workable Plan of Management is provided for the Long-nosed Potoroo population and agreed upon prior to any works commencing.

Adequacy of the proposed mitigation measures

The SEE proposes a number of general mitigating strategies to offset the impacts of the proposal. These strategies are summarised in Table 5.1 of the SEE and essentially involve:

- *Reviewing and implementing relevant impact mitigation measures outlined within the Tugun Bypass Construction Environmental Management Plans; and*
- *Providing a dedicated fauna underpass (1.8m x 2.4 m box culvert at grade) under the western section of the proposed overpass.*

Regarding the dedicated fauna underpass, the DEC note that fauna more readily utilise a wider culvert, and a 4.0 m x 1.8 m reinforced culvert would be more effective at maintaining genetic interchange between potoroo sub populations in the area. DEC also note that suitable fauna exclusion fencing, which also includes frog exclusion fencing consistent with that identified in the Tugun Bypass project, be used for this proposal.

Overall, however, the SEE does not provide any specific detail on mitigation measures but rather defers the management and mitigation of project impacts to proposed plans of management to be developed at a later stage (e.g. Integrated Potoroo Plan of Management and modified CEMP's used for the Tugun Bypass project). Without more detail, it is difficult to assess the adequacy of these measures or to adequately address the questions within the 7-part tests. In addition, the DEC are reluctant to support the proposal unless the TSC seeks further information (or can condition the approval) with regard to:

- *RTA's guidelines to prevent fauna road mortality;*
- *Vegetation clearing;*
- *Location and design of the proposed fauna underpasses;*
- *Details regarding erosion/sedimentation/ASSMP; and*
- *Consultation with the aboriginal community.*

Progressing the proposal to the determination stage

The following measures are proposed to progress the application to the determination stage without the requirement for further information. These measures incorporate general commitments outlined within the SEE and consider recommendations provided within the responses to the project reviewed here. It is recommended that these be included as consent conditions.

1. A Fauna Management Plan prepared by a qualified person and submitted and approved by Council's Environmental Scientist prior to commencement of construction. The plan must describe measures to mitigate fauna mortality pre, during, and post construction and include:

- *measures outlined within the Roads and Traffic Authority of NSW policies and guidelines to prevent fauna mortality during road construction and management;*
 - *measures contained within the Tugun Bypass Construction Environmental Management Plans including pre clearing protocols for fauna;*
 - *Provision of a dedicated fauna underpass under the western section of the proposed overpass that measures 4.0 m x 1.8 m and includes culvert features that will facilitate the movement of the Long-nosed Potoroo and threatened frog populations;*
 - *construction and operational stage fauna exclusion fencing (including frog exclusion fencing) linking to fauna underpass structures and consistent with designs employed in the Tugun Bypass project; and*
 - *ongoing maintenance regimes and commitments for fences and structures.*
2. *A Flora Management Plan prepared by a qualified person and submitted and approved by Council's Environmental Scientist prior to commencement of construction. The plan must describe existing vegetation and species within and adjacent the construction footprint and include:*
- *procedures for clearing of vegetation, limiting soil disturbance, and protecting adjacent terrestrial and aquatic vegetation and habitats;*
 - *procedures for protecting wallum heath up to and adjacent fauna movement structures;*
 - *landscaping and rehabilitation methods for disturbed areas implemented immediately following construction; and*
 - *plans for replacing hollows where these are removed through vegetation clearing for the proposal.*
3. *A Long-nosed Potoroo Integrated Plan of Management prepared in consultation with relevant stakeholders and a qualified wildlife biologist, and submitted and approved by Council's Environmental Scientist prior to commencement of construction. This plan must describe, but is not limited to:*
- *fauna crossings and fauna exclusion fencing, predator control programs, fire management, and revegetation;*
 - *time lines and performance indicators for all management measures;*
 - *defined roles and responsibilities; and*
 - *reporting and review mechanisms, with specific provision for a 5 year public review.*
4. *Maintenance of existing drainage through the provision of six 1.2 m x 2.4 m proposed culverts. Drainage plans to include water quality measures for the treatment of pavement runoff other than via grass swales due to the sensitive vegetation, habitats and species in the area.*
-

5. *A Heritage Management Plan submitted and approved by Council's Environmental Scientist prior to commencement of construction. This plan must include an appropriate level of aboriginal consultation and engagement regarding Indigenous heritage mitigation measures.*

General Comments

Commonwealth Legislation

Both the DEC comment and public submission to the proposal outlined the requirement for Council to consider matters of National Environmental Significance and the requirement for referral of the project to the Commonwealth Department of Environment and Heritage. Two Matters of National Environmental Significance occur within the immediate vicinity: listed threatened species and communities; and listed migratory species. The proposal was referred by the applicant (referral number EPBC 2006/3094) and determined by the Commonwealth Department of Environment and Heritage as 'Not a Controlled Action' dated 6th November 2006.

The DEC submission noted that the Wallum Froglet is listed under the Environment Protection and Biodiversity Conservation Act 1999. This species is not listed under this legislation at the present time.

Council's Senior Ecologist/Conservation Planner has assessed the application and makes the following comments-

Proposal Overview

The project involves the construction of an overpass over the Tugun Bypass to extend Boyd St across the NSW/QLD border to provide access to the proposed Cobaki Lakes residential development. The works extend approximately 300m into NSW, mostly within an existing corridor cleared under a previous Development Application.

Scope of Comments

The following comments are made on the basis of a desktop assessment of the Boyd Street Overpass – Statement of Environmental Effects (SEE) produced by Parsons Brinckerhoff in September 2006, discussions with Council's Environmental Scientist David Hannah and Pacific Link Alliance Environmental Manager, Darren Brighton, and a brief site visit conducted on 29 January 2007.

This assessment focuses the potential impacts on vegetation, although some comments are made on the potential impacts on a small but highly significant population of Long-nosed Potoroo, which is known to exist in the area.

Major Issues arising from the SEE

Vegetation Clearing

The SEE acknowledges that the proposal will result in the clearing of 4420m² of native vegetation, including 880m² of paperbark forest, which is regarded as Endangered under the Threatened Species Conservation Act 1995 (TSC Act).

While this may be case, it is not apparent from the SEE because although the alignment is shown, the development footprint is not specifically identified either in relation to an aerial photograph (Fig 2.2 of SEE) or in relation to the vegetation mapping used to make their assessment (Fig 4.1 of SEE). The situation is further confused by:

- 1. The fact that at least one of the vegetation communities that is identified in the SEE to be cleared (Scribbly Gum Mallee Heathland; see Table 4.1 of SEE) does not appear on the vegetation map (Fig 4.1 of SEE) in the vicinity of the development; and*
- 2. The vegetation mapping itself is presented at such a coarse scale that makes it almost impossible to evaluate against the proposal.*

Nonetheless, as a result of the site inspection and discussions with Darren Brighton regarding the expected distances beyond the road batters (~3.0m) that will be needed for construction and table drains, the total amount to be cleared appears to be between 4000 and 5000m².

*It should be noted that the area of "paperbark forest" to be cleared is actually dominated by rushes (*Typha orientalis*) with a couple of isolated paperbarks (*Melaleuca quinquenervia*) and swamp mahogany (*Eucalyptus robusta*) trees. The dominance of rushes over small areas is not unusual in communities more generally dominated by paperbark trees and probably represents minor variations in the water table and past disturbance of the site.*

As noted in the SEE, paperbark forest is regarded as Endangered under the TSC Act. The proposal on its own will contribute to the removal of less than 0.1ha of this vegetation community.

Approximately 0.4ha of Scribbly Gum woodland will be removed by the proposal. The SEE makes no comment on its conservation status. Although this community is not at this point scheduled under the TSC Act, it is nonetheless regionally significant.

Under the criteria set out in the Tweed Vegetation Management Strategy 2004 (TVMS; see Table 3.4 of that document) the Scribbly Gum community is considered "Vulnerable" and inadequately reserved by DEC. According to the TVMS there is about 125ha of this community remaining in Tweed Shire representing approximately 16% of its entire distribution within the bioregion (see Appendix 7 of TVMS).

The SEE does not make any provision to compensate for the loss of this vegetation.

Significant Flora Species

It appears from the SEE that surveys for Threatened plants were not carried out for this proposal. Instead the SEE defers to recent studies carried out as part of the approval process for the Tugun Bypass. Given the comprehensive nature of the work carried out for the bypass this approach is probably reasonable.

No significant species were observed during the field visit although a systematic search was not conducted.

Indirect Impacts on Vegetation

The SEE acknowledges potential negative indirect impacts to the vegetation arising from edge effects and weeds but suggests indirect benefits may arise from restoration of the drainage line that is currently blocked by the existing access track, and less erosion due to the creation of a sealed pavement.

There was clear evidence of weed invasion at the edges created by the existing access track. Weed invasion is likely to continue without active and ongoing management.

Cumulative Impacts

This proposal is part of a much larger development to facilitate further development of the access road and a substantial residential development at Cobaki Lakes.

The SEE also anticipates future upgrading of the overpass to include an interchange with the Tugun Bypass. To account for on and off ramps, this would involve substantial further clearing of significant habitat.

As the proposal is key to these future plans the potential cumulative impacts should be addressed at this stage.

Mitigation Measures

As noted in Council's Environmental Scientists' report, the mitigation measures proposed in the SEE essentially involve:

- 1. Reviewing and implementing relevant impact mitigation measures outlined within the Tugun Bypass Construction Environmental Management Plans; and*

2. *Providing a dedicated fauna underpass (1.8m x 2.4 m box culvert at grade) under the western section of the proposed overpass.*

Need for Specific Management Plans

Given the generic nature of the mitigation measures anticipated in the SEE, there is a clear need for more specific management plans to be in place prior to commencement of works. Accordingly the suggestions made in Council's Environmental Scientists' report for specific management plans are supported.

Mitigation of Long Nosed Potoroo Impacts

The mitigation of impacts on the population of Long Nosed Potoroo is the pre-eminent issue facing the development. Although the SEE anticipates various measures to "mitigate" impacts the SEE itself concludes that the proposal, and the developments it is designed to facilitate, may cause the local extinction of this Endangered population:

The proposed overpass is likely to increase the degree of isolation and fragmentation for the Cobaki lakes population. Although mitigation measures have been included in the proposal such as the inclusion of a dedicated fauna underpass, it is unclear to what extent these will be effective. It appears that the individuals are reluctant to cross the current direct access track, and in the future may not use the proposed underpass. The major impacts however are likely to be cumulative, including impacts from the Tugun Bypass and nearby residential development. Despite mitigation measures proposed as part of the bypass and in this document, there remains a risk that the small disjunct population may become extinct as a result of cumulative impacts. (Source: SEE, Appendix D – Impact Assessments, conclusion to section on the Long Nosed Potoroo.)

It is clear from the information provided in the SEE that there is no evidence that potoroos will utilise underpasses. Indeed it is suggested in the SEE that previous trapping work has found no evidence that individuals cross the existing track. While it is clearly desirable to facilitate the movement of these animals across the roadway the SEE acknowledges the proposed underpasses are purely experimental.

It should also be noted, that given the width of the proposed road and allowances for batters and associated table drains, any proposed underpasses would need to be in the vicinity of 50m long. At these distances an overpass of 2.4m wide (as proposed) would essentially form a long tunnel, a very different habitat from the potoroos known preference for low dense vegetation on sandy soil. Being dark confined areas without cover potoroos may also perceive tunnel-like underpasses as a predation risk. To encourage movement across the roadway for this species it is reasonable to assume that:

- 1. Distances between areas of preferred habitat should be minimised; and*
- 2. Intervening areas are as similar as possible to preferred habitat.*

For fauna underpasses this essentially means minimising their length, maximising their width, extending suitable vegetation cover near the underpass entrances and perhaps along their length, and providing as much natural light as possible.

To ensure the persistence of the potoroo population more credible options, in order of preference include:

- 1. Seek an alternative access and rehabilitate the existing access track. This option would avoid the area entirely and with active management could secure the population.*
- 2. Use the existing alignment but construct an elevated roadway at least over a significant proportion of the affected habitat and rehabilitate the remaining areas of the existing access track. An elevated roadway would avoid the need for extensive batters and associated table drains, which significantly increase the width of the roadway footprint. Due to the significant reduction in the roadway width, and the potential for access along the entire roadway length, this would allow suitable native vegetation cover to be planted up to the edge of the carriageway and, would be more likely to encourage movement across the alignment. This solution would also address road mortality issues, unwanted public access, weed invasions and allow for movement by other ground fauna (e.g. Wallum Froglets).*
- 3. Significantly increase the widths of the proposed underpasses. DEC suggest a 4m wide culvert for the current proposal. Under this option numerous similar-sized culverts would be required for the extension of the roadway towards Cobaki. This option would still create tunnels of about 50m in length and although wider culverts may alleviate some of the apparent reluctance of potoroos leave their preferred habitat, it remains unclear whether or not these would be used.*

Conclusions and Recommendations

*The proposal will result in the clearing of about 0.1ha of Endangered Paperbark Forest and about 0.4ha of regionally significant Scribbly Gum Woodland. **Provision should be made to compensate for the loss of this vegetation.***

*The proposal is key to a number of future developments including access to Cobaki Lakes residential development and a proposed interchange with Tugun Bypass. **The potential cumulative impacts should be addressed at this stage.***

*A number of generic mitigation measures are proposed in the SEE, There is a clear need for more specific management plans to be in place prior to commencement of works. **Suggestions made in Council's Environmental Scientists report above for specific management plans are supported.***

The mitigation of impacts on the population of Long Nosed Potoroo is the pre-eminent issue facing the development. The SEE itself concludes that the proposal in its current form, and the developments it is designed to facilitate, is likely to cause the extinction of this Endangered population. Some options to limit further decline in this population are outlined and should be investigated further.

The items raised above will be imposed as conditions of consent however the cumulative impact issue is considered to be dealt with by the requirement of a management plan for the potoroo which includes mitigation of the overpass, existing road and by-pass. The items above discussing mitigation options which includes an alternate route is not possible. However design options for the construction of the future road should be included in the potoroo management plan. The recommended condition requiring the management plan includes provision for this issue.

Council's Environmental Health Officer has assessed the application and makes the following comments-

It is stated in the SEE that impacts that can be avoided or mitigated to an acceptable level through the application of existing environmental management plans are not addressed in detail in this report. The aforementioned plans refer to the detailed Environmental Management Plans for the Tugun Bypass that have been prepared and submitted to Council for review.

Contamination – Checks of the Currumbin topographic map 1984 shows the site as swamp. Aerial photography dated 1970 (Run 5/5177-1), 1976 (Run 3/4066) and 1987 (Run 4/109-1) do not appear to reveal any potentially contaminating activities (swamp and scattered trees).

The Contaminated Land Management Plan for Tugun Bypass Project (PP-047-CLMP) prepared by Pacific Link Alliance (Rev 5) dated 19 October 2006 states that the Tugun Landfill was not constructed with an impervious layer and placement of materials may have occurred below the water table. A groundwater sampling revealed an elevated level of ammonium possibly as a result of leachate from this landfill.

Site remediation works, involving the relocation of a section of the landfill within the Tugun Bypass footprint is currently being undertaken by Gold Coast City Council, the responsible authority for the landfill. A specific Landfill Relocation Management Plan will outline the mitigation and management procedures for the tasks required to remove the landfill material. Groundwater monitoring at contaminated sites will be coupled to the project wide sampling program already undertaken by an environmental consultant.

The proposed Boyd St overpass portion of the project appears to be appropriately considered via the Contaminated Land Management plan for the Tugun Bypass Project.

Acid Sulfate Soil (ASS) – The soil within the area of the proposed Boyd St overpass is class 2 ASS. Review of the Acid Sulfate Soil Management Plan (PP-043-ASSMP) prepared by Pacific Link Alliance (Rev 4) dated 17 August 2006 indicates that samples HA11, 12 and 13 (collected by SMEC Australia - May 06) and TP2 (collected by Brinckerhoff - 2000) were all taken in the vicinity of the proposed Boyd St overpass footprint. All samples showed very low levels of acidic reaction.

Disturbance is expected to be limited to:

- Excavation of a culvert on the western side (0.5m BGL)*
- Open drainage line west of the main road alignment (1.0m BGL)*
- Excavation for pile caps at pile locations (2m wide, 12m long, 2m BGL)*
- Possible shallow concrete construction pad (approx. 0.5m BGL) adjacent to piling locations).*

Approximately 430m³ of natural soils may be disturbed during construction works. It is stated that all excavated soil during the construction of the Boyd St overpass should be placed directly into trucks and transported to the Tugun Bypass ASS treatment sites for neutralisation. Due to the provisions provided in the Acid Sulfate Soil Management Plan for the Tugun Bypass Project, no objection to the soils excavated during the Boyd St overpass works being treated in accordance with this plan.

Groundwater – The level of groundwater is approximately 1m below the existing ground surface and is may be intercepted during the excavation of footings (to be 3-4m wide and 1.5-2m deep) and some dewatering may be required.

The Acid Sulfate Soil Management Plan for the Tugun Bypass Project states that shallow groundwater quality will initially be compared against the ANZ Guidelines for Fresh and Marine Water Quality trigger values for all freshwater waters 80% species protection (disturbed sites caused by anthropogenic activities).

The Groundwater Management Plan for the Tugun Bypass Project (PP-050-GWMP) prepared by Pacific Link Alliance (Rev 6) dated 17 August 2006 indicates that extracted groundwater will be tested and treated prior to discharge into local waterways by the use of surface holding tanks/ponds, monitoring of pH, and the use of filters and flocculants. It is considered that these plans adequately consider impacts to groundwater as a result of the Boyd St overpass and Tugun Bypass works.

Waste – The SEE advises that waste generated will be typical of road construction and will be managed by amending the Waste and Resource Management Plan for the Tugun Bypass to include the Boyd St Area. Existing stockpile sites used for the Tugun Bypass will also be utilised for this development so no additional waste storage areas will be created as a result of the overpass works.

A review of the Waste and Reuse Management Plan (PP-050-WRMP) and the Spoil and Fill Management Plan (PP-051- SFMP) for the Tugun Bypass Project both prepared by Pacific Link Alliance (Rev4) and dated 17 August 2006 revealed an emphasis on waste reduction, reuse and recycling of waste products generated by the Bypass project as a whole, rather than the individual areas of the project. This plan would appear to adequately consider the waste generated by the Boyd St overpass also without the need of a new plan being generated.

Noise – It is noted that there are no residential properties within close proximity to the works. Due to the proposed noise impacts from the Tugun Bypass itself and that the site is located within 1km of the Gold Coast Airport, noise as a result of the construction and use of the proposed Boyd St overpass is considered negligible.

Engineering Assessment

Geotechnical / Earthworks

The proposed overpass shall require the construction of an earth approach and associated batters reaching a height of approximately 10.5m above the existing natural surface level. The design and extent of batters is currently in a concept stage. Any final design shall require a full geotechnical assessment of the effected areas.

Roads

Road Network

The proposed Boyd Street overpass provides a link from the future Cobaki Lakes development. The overpass forms an extension of the Cobaki Parkway linking the West Tweed, Bilambil and Cobaki areas to the regional road network.

Road typical cross sections

The detail submitted provides conceptual plan and longitudinal detail only. Future design plans shall detail the full construction detail including batter widths, pavement detail and provision of drainage structures. However the applicant has identified the limits of construction works ensuring the impact on the natural environment is defined.

Footpaths / Cycleway

The detail submitted indicatively identifies a pedestrian network shall be provided on the northern side of the structure.

Traffic Generation

The proposed overpass has been designed to cater for traffic volumes of up to 2236 movements as forecast to the year 2017.

The application had been referred to Councils Traffic and Transport Engineer whom has not raised any issues.

Stormwater Drainage

Construction Phase Operational Phase

The application had been referred to Councils Infrastructure Engineer for comment. The following response was received:

Stormwater management plans for the construction and operational phases of the development have not been provided with the application. However according to the Boyd Street Overpass 85% Preliminary Design Report by Pacific Alliance (Report No. DR-103-RD), the overpass will discharge to the same drainage system as the Tugun Bypass, consisting primarily of existing open drains. It is understood that the local drainage system in the vicinity of the overpass is part of the Cobaki Lake catchment, within Tweed Shire.

Adverse impacts on drainage capacity due to runoff from the overpass roadway are not anticipated, and culvert structures will be constructed where the overpass works intercept existing drainage paths.

The Tugun Bypass provides numerous sedimentation basins and constructed wetlands along its alignment to remove pollutants from road runoff prior to discharge to the local systems. The proposed overpass drainage does not utilise these treatment measures, discharging to a local channel downstream of adjacent ponds. Also, there are no "at-source" treatment devices in the piped drainage system for the overpass roadway. Instead, road runoff from the overpass will only receive "primary treatment" by grassed table drains and swales. It is not considered acceptable for runoff from the roadway to be discharged into the Cobaki Lake catchment without a more substantial pollutant removal system, as required of the Tugun Bypass.

Additional detail will be requested via a condition of consent for a separate s68 Stormwater Approval for the overpass, to rectify the stormwater quality issues prior to issue of a Construction Certificate.

Environment/Amenity

2.1 Noise Impact Assessment

The applicant has identified noise generated by the proposed development shall have the greatest impact during construction however is limited due to the proximity to Tugun Landfill, Gold Coast Highway, Pacific Highway and Gold Coast Airport. The closest residential area to the proposed overpass is approximately 500m to the north. Proposed mitigation measures include the provision of a Noise and Vibration Management Plan.

Landscaping

The applicant has not provided any landscaping detail for the proposed development. It has been tabled that a detailed Landscape Design Plan has been created for the Tugun Bypass.

The overpass is a critical part of the transport network of the Tweed. Council's management of development in the northern part of the Shire is dependant upon an alternate northern access route. The overpass forms an important link in the road network which will ultimately have beneficial and social and economic impacts for the Tweed. The overpass will enable growth management and alleviate traffic pressure on other parts of the network.

Whilst the overpass itself will have minimal impacts the environmental impacts of development in the area related to threatened species are challenging, however the proposal presents an opportunity for Council and other stakeholders to be involved in the management of the Long Nosed Potoroo.

(c) Suitability of the site for the development

The site is a designated road corridor and links to the QLD network. The site is suitable provided careful management of the Potoroo is undertaken.

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

The application was advertised and one submission was received from the Tweed Heads Environment Group and is discussed below. The application was referred to relevant Government Agencies and are discussed below.

Department of Lands

The Department has made comment regarding the Crown Land in close proximity to the by-pass. Conditions will be imposed regarding the Crown Land.

Department of Environment and Conservation

The matters raised by the DEC have been discussed above in section (b). Conditions will be imposed regarding fauna, erosion, sedimentation and consultation.

The submission from DEC is reproduced below with numbered paragraphs and comments from the applicant following with corresponding numbering.

Your reference : DA06/1149
Our reference : GR 2378/11 DOC06/53935
Contact : Kirsty Sutherland, 66402513

LN: 73179

TWEED SHIRE COUNCIL	
FILE No.	DA06/1149 Pt. 1
Doc. No.	1496762
REC'D	17 NOV 2006
ASSIGNED TO:	MCGAVIN, L
HARD COPY	<input checked="" type="checkbox"/>
IMAGE	<input type="checkbox"/>

The General Manager
Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484

Rel Doc: 1482230

16 NOV 2006

Attention: Mr Lindsay McGavin

Dear Mr McGavin

Re: Development Application No.DA06/1149 – Boyd Street overpass associated with Tugun Bypass, Sandy Lane Cobaki Lakes

I refer to your letter dated 17 October 2006 inviting comments from the Department of Environment and Conservation (DEC) in regard of the above Development Proposal. An extension of time until 17 November 2006 was approved for the DEC to respond to this matter. /

The DEC offers the following comments to assist Tweed Shire Council (Council) in its assessment of the likely impacts of the proposal on threatened species and their habitats. 2

The Statement of Environmental Effects (SEE) has identified the proposed development site to contain habitat for threatened species listed on schedules to the *Threatened Species Conservation Act 1995*. In particular, an endangered population of the Long Nosed Potoroo and a local population of the threatened Wallum Froglet have been identified in the immediate vicinity of the site. 3

The SEE states that future developments in the area are likely to place significant pressure on flora and fauna, including the widening of the Boyd Street access track to provide for future large scale residential developments to the north and south of the subject site. It is therefore recommended that cumulative effects of the proposal be considered in the implementation of ameliorative and mitigation measures with regard to threatened species at the site. 4

The Long Nosed Potoroo has already been identified to be under extreme pressure as a result of the construction of the Boyd Street access track; the definitive impact which resulted in its listing as an Endangered Population by the NSW Scientific Committee. The local Wallum Froglet population is also at significant risk from this proposed development given their small size limiting movement between populations, their specific habitat requirements and sensitivity to altered pH. Both species are highly susceptible to road deaths. A study to identify the number and species of road killed frogs on the Coast Road, 5 km north of Lennox Head, was conducted by the Royal Zoological Society of NSW June 2006. The study found that for the summer period (December-March) more than 10,000 Wallum Froglets are killed on this 4 km section of road alone. 5

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www.environment.nsw.gov.au

Department of **Environment and Conservation** NSW

The following mitigation measures, or adjustment to the proposed mitigation measures provided in the SEE are recommended for inclusion as conditions of consent or that they be further addressed in the SEE. Application of these measures are considered imperative to minimise impacts to the Long Nosed Potoroo population and the Wallum Froglet. 6

It is also noted that an Aboriginal cultural heritage assessment for the proposed development has not been undertaken, which should have been addressed in the SEE. 7

MITIGATION AND AMELIORATIVE MEASURES

The SEE indicates that existing drainage lines would be maintained under the proposed bridge span by six proposed 1.2 m x 2.4 m culverts. This is supported by DEC and we also recommend that water quality and the stability of these drainage lines be maintained throughout the construction phase. It is noted that the SEE has not included the design details or a discussion of mitigation measures with regard to the proposed culverts. 8

Wallum Froglets are highly sensitive to any change in water quality and in particular pH. Care must be taken when disturbing soil during construction given that the site has been identified to contain acid sulphate soils. Further, erosion and sedimentation controls have not been discussed in the SEE. Effective measures to minimise sedimentation entering the drainage lines at the site should be in place prior to construction to reduce impact to water quality and the Wallum heath. Protection of Wallum heath vegetation at the site and, in particular, at each end of the proposed culverts is essential to facilitate use of the culverts by adult Wallum Froglets. 9

The maintenance of Wallum heath (suitable Wallum Froglet habitat) at either entrance to the culverts is crucial in assisting frog thoroughfare. Placing of rocks and gravel along the culvert floor may also encourage usage. Where disturbance of vegetation is unavoidable during the construction phase it should be rehabilitated with particular emphasis on encouraging Wallum Froglet habitat up to the edge of the culverts. It is noted that the SEE predicts that a further 0.05 hectares of vegetation may be cleared for provision of the proposed overpass, however, the impacts of this clearing have not been assessed. 10

The SEE recognises that fauna injury or death could occur as a result of the project's construction and as a consequence of road kills once the proposal is complete. It is stated in the SEE that the Roads and Traffic Authority of NSW has policies and guidelines in place to prevent fauna mortality during road construction, however, there is no commitment in the SEE to implement these guidelines or how they would apply to this proposal. 11

It is recommended that suitable fauna fencing, consistent with that identified in the Tugun Bypass Environmental Impact Statement, be used for this proposal. The fauna fencing should also consist of a double lipped metal barrier at the base of the fence for effective frog exclusion. Frog fencing should be used along drainage lines to direct frogs into the culverts and away from the overpass and Boyd Street. 12

The SEE states that a dedicated fauna underpass or box culvert 2.4 m x 1.8 will be provided to facilitate safe movement of the two sub-populations of the Long Nosed Potoroo east and west of Boyd Street. The DEC has noted that fauna more readily utilise a wider culvert, and a 4.0 m x 1.8 m reinforced culvert would be more effective at maintaining genetic interchange between these two sub populations. 13

The proposed fauna underpass could provide movement for both the Long Nosed Potoroo and Wallum Froglets (and other fauna) by the provision of a fauna walkway along each wall of the culvert and a rock mattress/gravel floor at a centre low point through the middle of the culvert. This design would also serve for the drainage of high peak flows during rainfall events where Wallum Froglet tadpoles and potentially some adult froglets could be swept through culverts. 14

1
Again, it is noted that the culvert design details have not been included in the SEE. Fauna fencing for the exclusion of the Long Nosed Potoroo should be provided to direct movement of fauna toward the proposed underpass (box culvert) and away from Boyd Street and the proposed overpass. 15

Commonwealth Legislation

The Long Nosed Potoroo and the Wallum Froglet are listed as vulnerable under the Federal *Environment Protection and Biodiversity Conservation Act 1999*. Council should consider the need to refer the development application to the Department of Environment and Heritage for its assessment as to whether the proposal constitutes a "controlled action". 16

Aboriginal Cultural Heritage

0 The DEC is aware that the subject site holds particular significance to the local Aboriginal community; such significance can be both physical and non physical. It is therefore recommended that an appropriate level of consultation be undertaken with the Tweed Byron Local Aboriginal Land Council and the Eastern Yugambah Limited to ensure knowledge relating to the significance of the area is shared and considered in the development assessment process. 17


Conclusion

The DEC recommends that Council seek further information with regard to impacts from the proposed additional vegetation clearing, the implementation of RTA's guidelines to prevent fauna mortality, the location and design of the proposed fauna underpasses, and details regarding proposed erosion/sedimentation measures before determining whether the proposed development is likely to significantly impact threatened species or their habitats. Consultation with the local Aboriginal community and knowledge holders is also recommended. 18

The DEC's support for the proposal is dependent on the consideration of the above recommendations in the SEE or their inclusion as conditions of consent should Council choose to grant development consent for the proposal. 19

0 Should there be any other matters, or should Council be in possession of information that suggests the interests of the DEC may be further affected by the proposal, please contact Kirsty Sutherland on (02) 6640 2513. 20

Yours sincerely



JON KEATS
Head Industry and Waste Unit, North Coast
Environment Protection and Regulation

COMMENTS FROM THE APPLICANT

Paragraph	Comment/Response
1	None required
2	None required
3	None required
4	The Boyd Street Overpass - Statement of Environmental Effects (SEE) provides an assessment of cumulative impacts and their management, where possible. This includes the commitment to a fauna underpass for species such as the Long-nosed Potoroo. This structure is anticipated to mitigate the existing barrier effect of the Boyd Street access track and future, approved road. An Integrated Plan of Management for the Long-nosed Potoroo is also being coordinated by the Department of Main Roads and has included the BSO within its scope.
5	Environmental impact assessment indicates that the proposed Boyd Street Overpass (BSO) would not have a significant effect on the Wallum Froglet. Road elevation due to bridge structures and fill layers is anticipated to decrease the potential for frog mortality.
6	None required
7	The BSO is contained within the designated corridor of the approved, Boyd Street extension. Commitment to implementing a Cultural Heritage Management Plan is provided within Table 4.3.
8	The proposed culverts are situated within ephemeral drainage lines and are unlikely to contain water during the period of construction. Standard control measures to maintain water quality would be implemented, when and where required. Commitment to developing an Erosion and Sedimentation Control Plan is also provided. Design details on the six culverts are not shown within the SEE as these structures are not within the scope of the BSO. These structures would be built by others.
9	Extensive detail on environmental controls is typically not provided within Development Applications. Table 4.3 commits to the implementation of an Erosion and Sedimentation Control Plan and Acid Sulphate Soils Management Plan, if the project is approved.
10	Revegetation at the entry and exit points to the fauna culvert would be undertaken. Natural features (earth and organic litter) would also be integrated within the culvert floor.
11	Section 4.2 of the SEE (p.34) commits to the use of fencing, with final details to be determined during Detailed Design. Concept drawings within Appendix A show details on proposed fauna fencing.

Paragraph	Comment/Response
12	It is agreed that frog exclusion fencing could be beneficial along the common boundary of Boyd Street and known Wallum Froglet habitat. For this measure to be effective, exclusion fencing would be required along a significant section of Boyd Street, of which a limited length is within the scope of the BSO. In isolation, fencing of this section is not anticipated to provide a cost effective outcome and may not be required in this area due to the steep grade of embankments.
13	Surveys (conducted by the AMBS) of already installed fauna culverts, indicate that the Long-nosed Potoroo will use culverts of the size proposed.
14	The proposed fauna culvert will be designed as a dry cell with a natural covering (earth) over the concrete base.
15	Section 4.2 of the SEE (p.34) commits to the use of fencing, with final details to be determined during Detailed Design.
16	The Wallum Froglet is not prescribed under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> . A referral (2006/3094) for the BSO was lodged with the Department of Environment and Heritage (DEH) on 10 October 2006. The Minister for Environment and Heritage has subsequently determined that the BSO is not a controlled action.
17	Aboriginal cultural heritage monitors (one representative from each group) will be invited to be present during clearing and grubbing works. 48 hours notice will be provided to an existing register (as developed for the Tugun Bypass) of monitors. This register includes representatives of the Tweed Byron Local Aboriginal Land Council and the Eastern Yugambah Limited.

Paragraph	Comment/Response
18	<p><u>Vegetation</u> Section 4.2 of the SEE provides detail on the direct and indirect impacts that could occur as a result of vegetation clearing. Indirect impacts (fragmentation and edge effects) are inexistence and described. Where possible, efforts to avoid vegetation clearing (within the already approved and cleared road corridor) have been undertaken and would result in a small area of clearing. Impact assessment is considered to be sufficient for the type and scale of effect.</p> <p><u>Fauna Mortality</u> Reference to RTA guidelines specifically infers the use of fauna exclusion fencing to prevent road strike.</p> <p><u>Fauna Underpasses</u> Concept details on the location, type and size of the proposed fauna underpass are provided. Section 4.2 (p.33) states that the underpass is a large re-enforced box culvert and would be constructed at grade as to provide a dry base. Commitments to re-vegetation (entry and exit points) are also provided.</p> <p><u>Erosion and Sedimentation</u> Soils and grade within the area of disturbance are not problematic and can be managed using standard control measures. Section 4.2 commits to the development of an Erosion and Sedimentation Control Plan.</p> <p><u>Consultation</u> Noted.</p>
19	Noted.
20	Noted.

Department of Natural Resources

The DNR have provided their terms and conditions for the proposal.

Tweed Heads Environment Group

The THEG have raised a various issues including the Potoroo, Aboriginal Heritage, water quality, controlled action and alternate routes. These issues have been discussed in previous sections of this report.

The submission from THEG is reproduced below with numbered paragraphs and comments from the applicant following with corresponding numbering.



23 November 2006

The General Manager
Tweed Shire Council
PO Box 816
Murwillumbah NSW 2484

Dear Sir,

Re - Integrated Development Application (IDA) No DA06/1149 - Queensland Department of Main Roads (QDMR) Overpass from Sandy Lane (NSW) Cobaki Lakes to Boyd Street Tugun (QLD)

Our group wishes to advise you of our concerns in regards to this proposal, and the serious impact that such work will have on our natural and human environment.

- 1
2
- 1 We call upon the Council to ascertain the impact on local Tweed traffic in having only a two-lane Overpass bridge crossing the Tugun bypass road and rail corridor when a four lane Overpass is necessary to match the QDMR's Cobaki Lakes traffic concept plan. (QMR/Pacific Alliance Plan dated 22 October 2004).

The Statement of Environmental Effects (SEE), which accompanied the DA advises that: "consideration was given to a full diamond interchange upgrade at Boyd Street of this overpass to a four-lane dual carriageway with design right turn lanes. Ramp terminals would be signalised. Single lane entry and exit would connect to the Tugun Bypass. The upgrade would be subject to a separate application".

3

No mention was made of traffic ramps on the NSW side of the Overpass nor was any concept traffic plan provided.

4

We consider that the timing of the Cobaki Lakes traffic Interchange has not been shown by the proponent for the following reasons:

5

- Queensland Main Roads considers that a Cobaki Lakes traffic Interchange would interfere with traffic flow on its four-lane Tugun Bypass (the relocated Pacific highway). There could be traffic delays in this section of four-lane highway when the six-lane sections of the Pacific Highway Nerang to Stewart Road Tugun and the proposed six-lane section of the Tweed Heads bypass are completed.
- The already high cost of the Tugun Bypass. The original agreement with the developer at Cobaki Lakes on who pays for the Cobaki Lakes traffic- Overpass and Interchange is the subject for legal argument with QDMR as the current Overpass has been sited eastwards from NSW to the NSW/QLD State border. QDMR has already created a precedent of providing costly 'free' bridge Overpasses; one to access Gold Coast Airport land and another to access a Tugun Hill residence. There is also the matter that Section 94 Tweed Shire Council funds should not have to be spent partly in Queensland, to provide access across this Federal and State Government funded Highway and rail project.
- The Cobaki Lakes traffic Interchange would occupy a much larger land footprint than a two-lane Overpass and would affect more threatened/rare fauna species and their habitat. Threatened/rare Fauna species include: Long-nosed Potoroo. (Page 4-29 figure 4.7) Wallum froglet, Queensland Giant Dragonfly, Swordgrass Brown (butterfly). (Page 4-28 figure 4.8) Tugun Bypass Species Impact Statement, (December 2004), Vol 1 Main Volume1, and nearby Wetlands.
- The construction of the Cobaki Lakes traffic Interchange at this time would compromise the QDMR's position that the Sandy Lane Boyd Street (Two-lane Bridge Overpass only) is a stand-alone project and is separate from the Tugun Bypass now under construction. Even though the Overpass is a stated stand-alone project it is noted that Pacific Alliance have prepared the SEE document. The exclusion of the future Boyd Street/Sandy Lane traffic Interchange has allowed the Tugun Bypass to be constructed earlier without time delaying construction approvals.

Omissions from Integrated Development Application

On 23 October 2006 Tweed Heads Environment Group together with other community members made a submission to the Department of the Environment and Heritage (DEH) on a Referral Application by QDMR to them concerning the impact on threatened fauna species and other matters relative to *The Environment Protection and Biodiversity Conservation Act 1999 No 90*. 6

Submissions on this Referral Application closed on 25 October 2006.

It is our understanding that the DEH have now processed the QDMR Referral Application, but our group has not received notice of their determination. If the matter is determined a non-controlled EPBC action a request will be lodged for a Statement of Reasons for their decision.

It is noted that QDMR did not raise their outstanding EPBC Act Referral Application (Reference number 2006/3094): "Queensland Department of Main Roads/Transport – land/Cobaki Lakes to Tugun/Qld/Boyd Street Overpass in their Development Application." 7

Queensland Department of Main Road's EPBC Act Referral Application (Reference number 2006/3094) 8

Tweed Heads Environment Group extract of submission to the Department of the Environment and Heritage is pertinent to this Integrated Development Application and states:

(Start of extract of submission) "Description of the proposal - Page 1 Para. 2.1

The proposed Boyd Street Overpass carriageway will carry road traffic from the preliminary earthworks of the New South Wales Cobaki Lakes residential development, across the present road construction of the Tugun Bypass (a controlled action) and the proposed (2016) Queensland light rail service, connecting Robina to Bilinga. Tweed Shire Council Development Control Plan 17 dated April 1990 and adopted 19 November 1992, provides for a four-lane road reserve between the Cobaki Lakes residential development to Boyd Street. Only a two-lane traffic carriageway overpass-bridge is proposed between New South Wales and Queensland.

Another Queensland entry from the approved Cobaki Lakes residential development is via New South Wales' distributor roads Kennedy Drive and Piggabeen Road. 9

At some future time, a further access road to Queensland could occur, when the NSW eastern section of Piggabeen Road is connected to the western section of Piggabeen Road in Queensland.

Our Comment

The proponent's referral statement: "The Overpass will create the only access to the residential development once the Tugun Bypass is complete" is clearly wrong as another access point to Queensland already exists.

The proponent has written in Community Liaison Group Minutes to our community advising that the Boyd Street Overpass project 'concept design' will include the provision of a on/off ramp traffic interchange that will allow future access for NSW West Tweed local traffic to the Tugun Bypass. (the relocated Pacific Highway). 10

Incomplete description of the Overpass proposal

We consider that the proponent has left out critical information (a future Interchange) in their Referral Application. This Referral Application indicates that the project concerns only environmental issues of an Overpass from Boyd Street to the access road leading to the Cobaki Lakes residential development. Undisclosed information about an interchange does not allow the Environment Minister to fully consider this proposal. 11

In the *Mees v Roads Corporation* (8 April 2003) FCA 306 Justice Gray of the Federal Court found: "the referral document must contain information that is truthful and complete, so as not to mislead. The purpose of the EPBC Act, to protect the environment, would be subverted if the Environment Minister were to be called upon to make a determination in relation to proposals without full information of the kinds required by the EPBC Act and the EPBC Regulations".

There is sufficient information in recent documents to indicate the construction of a future Boyd Street Interchange.

Pacific Link Alliance Community Liaison Group Minutes 9 August 2006 advise on the Boyd Street Update:

- The design is compatible with a future Interchange.

• The alignment will cut through the Recycling Centre (a known Aboriginal Cultural Heritage site)
The Tugun Bypass Boyd Street information Sheet (June 2006) advises of a future Interchange: "In 1993 the Gold Coast City Council, the Tweed Shire Council, Main Roads and a developer signed a number of Deeds of Agreement". "The Deeds refer to the construction of an overpass or interchange where Boyd Street crosses the proposed Tugun Bypass route, road widening along Boyd Street, and traffic signals at a new intersection with the Gold Coast Highway. 12
These works would be undertaken progressively a traffic demand on Boyd Street increased".

The Tugun Bypass Submissions Report also advises:

"In summary, the Tweed Shire Council raised the following issues in support of a Boyd Street Interchange:

- The removal of the Boyd Street interchange has jeopardised the Tweed Shire Arterial Road Network. Tweed Shire Council requests that the necessary planning and environmental approvals be sought for the Boyd Street interchange as part of this EIS process, to facilitate its future construction.
- The existing approvals for the Cobaki Lakes Development were preceded by satisfactory arrangements being established with Gold Coast City Council and QDMR. The Boyd Street interchange would connect the Cobaki Parkway to service the future urban areas of Cobaki Lakes and Bilambil Heights.

This arrangement led to a series of legal agreements between the developer of the Cobaki Lakes, Gold Coast City Council and QDMR that ensures road access from the Cobaki Parkway to Boyd Street is entitled.

Without the interchange it is uncertain how these legal agreements can be met. The Cobaki Parkway could function with an overpass rather than a full interchange at Boyd Street, however there would be a number of access and traffic impacts". (4.9.4 Interchanges and Overpasses - Page 4-101)

It was also advised: "However the Tugun Bypass would be designed to permit a four (4) lane overpass bridge, thereby maintaining access along Boyd Street. If such a structure were to proceed, it would be subject to separate planning approval".

Tweed Shire Council Minutes dated 16 March 2005 also advise: "Council will reconsider its opposition to the proposal (The Tugun Bypass) if the Queensland Department of Main Roads issues a supplement to the currently exhibited EIS which includes a full interchange at Boyd Street and that this interchange becomes an integral part of the Tugun Bypass proposal in terms of the environmental process".

Our Comment

It is considered that the matter of (if and when) the Boyd Street Interchange might be built will be understood, when the Boyd Street Overpass Development Application has been determined by Tweed Shire Council after consideration of the proponent's current Development Application for the Boyd Street Overpass. 12

• *Tweed Shire Council has advised, that the proponent's development application for the 'Boyd Street Overpass', lodged two weeks ago, will be placed on public exhibition for 28 days from 25 October 2006.*

• *Assessment of the 'Boyd Street Overpass' project by Tweed Shire Council will proceed after 22 November 2006.*

If the Development Application is approved without Council's preferred condition of a timed Boyd Street Interchange, the start of the Boyd Street Overpass project will be much later than stated in this Referral Application: "Construction for the proposed activity is due to commence in October 2006 and be completed by December 2008" (Para 2.3 Timeframe). 14

Thus the proponent should describe the larger action of a future Interchange as required in part 2.6 of the Referral Application or categorically state that a Boyd Street Interchange is definitely a non-event.

Information re Long-nosed Potoroo – Listed as an endangered population under Schedule 1, Part 2 of the Threatened Species Conservation Act 1995.

The Tugun Bypass Environmental Assessment Report January 2006 advises on the Cobaki Lakes and Tweed Heads West population of "Long-nosed Potoroo – an endangered population" NSW Government Gazette, 3 December 2004. 15

"The Species Impact Statement (SIS) notes that the regional abundance of this species is unknown, but quotes estimates of approximately 250 A population of at least 55-65 individuals, and possibly as high as 85 individuals, occurs in a 88ha area to the west of the alignment (at the site of the Boyd Street Overpass), near the intersection with Boyd Street.

Scribbly Gum Mallee Heathland, Tree Broom Heathland and Swamp Mahogany-Scribbly Gum Forest support the highest densities of Potoroo.

The EIS indicates that about 0.5ha of the eastern edge of known Potoroo habitat would be removed by the Tugun Bypass proposal, a *controlled action* (EPBC 2004/1861)

The EIS notes that a development access track to the Cobaki Lakes development (located west of the Bypass and accessed from Boyd St) has bisected the habitat for the Potoroo and acted as a barrier to movement".

Our Comment

Boyd Street Overpass is an additional project to that of the Tugun Bypass and affects a much larger area of Long-nosed Potoroo habitat. The additional area of lost Long-nosed Potoroo habitat is not declared in the Referral Application. 16

If the Boyd Street Overpass/Interchange concept plan proceeds, a considerable part of the Long-nosed Potoroo habitat and population will be destroyed or seriously affected.

The Referral states that the overpass could partially mitigate the barrier effect of the Cobaki Lakes track by including underpasses for the Long-nosed Potoroo, and suggests the highway verge each side of the 700 metre long Boyd Overpass bridge "is likely to maintain, if not increase connectivity for this population" (Page 13, paragraph 5).

The Tugging Bypass Species Impact Statement (SIS)(February 2005) advises:

"The highest densities were also recorded north and south of the access track to the Cobaki Lake development. No individuals were observed crossing the track, indicating that it has effectively divided the population into two sub-populations". (Page 5-3. Paragraph 5.) 17

Our Comment

Fauna consultants advise that underpass mitigation measures are unproven for the nocturnal and shy Long-nosed Potoroo. It is noted that the Tugun Bypass EIS (Page17-11) recommends two underpasses to facilitate north-south movements of the Long-nosed Potoroo stating that "the effectiveness of these were unknown" and were "experimental in nature". 18

Other mitigation measures

The construction management plan for the Long-nosed Potoroo is to be implemented throughout the various stages of construction and would include, but not be limited to the following:

• Initiation of fox control measures within Long-nosed Potoroo habitat on the area of NSW Crown land, to the west of the Tugun Bypass. 19

• Provision of fauna exclusion fencing along the Bypass corridor extending from chainage 2400 – 3600 metres to deter domestic dogs and cats from residential areas to the east from accessing Long-nosed Potoroo habitat.

Our Comment

The Tugun Bypass project has been underway since March 2006, yet the above mitigation measures to protect the Long-nosed Potoroo have not been implemented. 20

Description of important features of the project area

(i) known Indigenous heritage values

Aboriginal Cultural heritage

A descendant of local Aboriginal traditional owners has advised our group that the proponent has not consulted local traditional owners, who are more than 177 in number.

The Overpass/Interchange is a separate project to the construction of the Tugun Bypass and consultation with Aboriginal traditional owners should have been undertaken. 21

I have also been informed that more than 177 from the 180 plus local Aboriginal traditional owners have rejected the PacificLink Alliance Aboriginal Cultural Heritage Management Plan for the Tugun Bypass.

An Aboriginal cultural heritage management plan should be developed in consultation with the Traditional owners to deal with any material that might be discovered during the subsurface testing or during construction. 22

If any unexpected non-Indigenous places, objects, items or issues of potential cultural heritage are encountered during the course of construction works, works should cease and the Queensland Environment Protection Agency and/or NSW Heritage Office should be contacted, depending on jurisdiction.

C 4 Chainage - 2200 metres, page 15-6 Vol. 1 Main Vol. EIS)".

The abundance of Aboriginal surface objects in this Tweed Shire Council's Cobaki and Terranora Broadwater 23

Aboriginal Cultural Heritage Management Plan

Map B of the Tweed Shire Council's 'Cobaki and Terranora Broadwater Aboriginal Cultural Heritage Management Plan (August 2006)' identifies an area beside the proposed Boyd Street Overpass as a location of Cultural Significance, which contains significant sites.

The Tweed Shire Council's plan indicates that the proponent's statement that "possible Indigenous heritage value is very low" is not accurate. (Page 10 of the Referral Application)

An indication of the density of past Aboriginals presence in the Boyd Street Overpass area lay in the fact that the Kombumerri Corporation for Culture Museum contains thousands of stone artifacts collected from the Gold Coast area.

- The Tugun Bypass Environmental Impact Statement advises: "One of these (surface) collections was undertaken in the 1960's by amateur archaeologists and local scout groups. Almost every visible stone was collected around John Flynn Hospital and Medical Centre area are low because of these past surface collections.

Sub-surface investigation is likely to produce further objects and evidence of ancient Aboriginal occupation.

Paragraph 4.2 - Likely impacts on the environment (page 12)

No action that will be taken on Commonwealth land or that may affect Commonwealth land 24

The proponent answered 'No'

The proponent's statement is questioned for accuracy.

Approximately 45 hectares of the Commonwealth land, covered by the Cobaki Broadwater and located approx. 1000 metres south east of the proposed Boyd Street Overpass, can be affected adversely by this project.

Drainage

I am not aware of any creek adjacent to the Boyd Street Overpass as mentioned on page 10 of the Referral Application, but have seen constructed drains that enter NSW SEPP 14 Wetlands (Map 1), bordering the Cobaki Broadwater. A Boyd Street Overpass presents a potential risk to the physical environment, most notably on water quality in the "stressed" Cobaki Broadwater.

- The C4 Tugun Highway construction project could expose soils during earthworks that when as suspended sediment with associated pollutants (Gold Coast tip-site), can be washed into nearby watercourses, causing silting of waterways and damage to the Cobaki Broadwater marine ecosystem.

Drainage from known acid sulphate soils in the Boyd Street Overpass area is a major source of dissolved iron in our estuary and when mixed with nutrient laden sediments could release massive toxic algae blooms into the Lower Tweed Estuary.

Cobaki Wetlands - an area of High Conservation Value

The Cobaki wetlands have been identified as having significant high conservation value with one of the highest levels of flora and fauna species biodiversity in Australia, with more than 800 native species.

The subject area, described by scientists as an 'environmental goldmine' includes the following species: 25

- A total of 71 listed threatened/endangered species
- An additional 31 species of regional/distributional significance
- 5 endangered ecological communities
- Significant Coastal habitat
- An Important waterfowl and migratory wetland bird - nesting, feeding and roosting habitat, protected by International Treaties (JAMBA and CAMBA) and the RAMSAR and Japanese Agreements

The Cobaki Wetlands also provide access as a wildlife corridor to other significant environmental areas.

Community alternatives to existing Boyd Street Overpass corridor.

• Alternative access routes to the Cobaki Lakes Development should be investigated. The existing Boyd Street access should be closed and rehabilitated to address impacts on threatened species - the Long-nosed Potoroo as approvals for an overpass or interchange at Boyd Street pose significant environmental difficulties. It is considered the Boyd Street access was not included as part of this assessment because it could delay the Environmental assessment of the C 4 Route of the Tugun Bypass.

26

We thank you for your consideration of this matter and request acknowledgement of this communication.”
(End of submission)

Tweed Heads Environment Group requests take the above submission into account when you are assessing this development application.

Omitted and questioned information contained in the Development application

There appears to be deficiencies in the applicant's Integrated Development Application (IDA). The respondent answered 'No' or N/A to the following answer boxes in its IDA development application.

27

QDMR's Development Application advises:

- N/A - Filling of the land (road embankment leading to the overpass and flood prone Sandy Lane.
- N/A - NSW Cobaki Broadwater Fisheries (impact of drainage on wetlands and Cobaki Broadwater)

Our Concern

1. Considerable earthwork fill will be required for the 5000 metre, 5.6% grade Overpass embankment and the build up of Sandy Lane beyond flood level, causing damming effects.
2. Overpass, road and storm drainage to nearby Wetlands and the Cobaki Broadwater could be damaging to Water quality and therefore to fisheries and wetland bird feeding habitat,
3. Flooding caused by damming of acidified land in the Sandy Lane Reserve area (zoned "7 (a) " Environment Protection - Wetland and littoral Rainforests) is likely to cause 'poor' water quality to drain into the Cobaki Broadwater.

28

- N/A - Heritage Office Heritage Act
- N/A - National Parks and Wildlife Act 1974 – Section 90, Destruction of Aboriginal relics and places.

Our Concern

4. Significant Aboriginal Cultural Heritage identified in the Tweed Shire Council's Cobaki and Terranora Broadwater Aboriginal Cultural Heritage Management Plan (August 2006) have been listed in the Council plan, and the proponent has not adequately addressed this matter. (refer to the DEH submission).

- 'No' - Requires concurrence of other authorities for: 'Critical habitat under The Threatened Species Act'.

Our Concern

5. Matters of national environment significance that are relative to *The Environment Protection and Biodiversity Conservation Act 1999 No 90* are being assessed by the Department of Environment and Heritage. No advice of determination has been received.
I am not aware of any response from the Department of Environment and Conservation NSW regarding threatened species of flora and fauna present within the Cobaki and affected by the Overpass/Interchange. Has NSW Fisheries provided a response?

There is a requirement for an Environmental Impact Statement

Although a Statement of Environmental Effects has been exhibited by the proponent's IDA, Tweed Heads Environment Group requests that an Environmental Impact Statement be prepared in terms of NSW Planning laws for the following reasons:

29

- Considerable earthwork fill will be required for the NSW 5000 metre, 5.6% grade Overpass embankment and the build up of Sandy Lane beyond flood level, Overpass, road and storm causing a damming affect.
- 'Poor' water quality from inadequate drainage works and the loss of threatened species habitat will adversely affect the natural environment. Cobaki Broadwater migratory wetland bird - nesting, feeding and roosting habitat, protected by International Treaties (JAMBA and CAMBA) and the RAMSAR and Japanese Agreements could be adversely affected by loss of Broadwater feeding and roosting habitat.

- Insufficient compliance of *The Threatened Species Conservation Act 1995 (NSW)*, matters relating to Map 1 SEPP 14 Wetlands adjacent to this project and matters of national environment significance relative to *The Environment Protection and Biodiversity Conservation Act 1999 No 90*
- Sandy Lane - Cobaki Lakes. The new Sandy Lane road reserve, on which the Overpass/Interchange will be built, was declared a public road in 1993. It is not certain whether this lane is now declared Council 'operational' land, which will allow road construction. It is also unclear from the IDA (Appendix A) plan dated October 2004, whether the curved Overpass/Interchange fits within the existing Sandy Lane road reserve.

- The following Tweed traffic matters, that remain inadequately addressed include:

* An upgraded Tweed traffic concept plan should be provided, including NSW traffic on and off ramps from Sandy Lane to the Tugun bypass in the future diamond Overpass interchange (not mentioned in the SEE). The Traffic plan should indicate the timing and the estimated costs for such works. 30

* The absence of a "future" traffic Interchange at the Sandy Lane/ Boyd Street Overpass connecting to the Tugun Bypass, will increase adverse traffic conditions for Sandy Lane/Boyd Street traffic users. 31
Boyd Street traffic, increasing to 29,000 vehicles per day will cause unacceptable delays for Tweed residents trying to reach Tweed commercial centres through several sets of grade level Gold Coast highway traffic lights. Without funding the Boyd Street/Sandy Lane future Interchange may not be built when required.

*Increasing traffic from several mega developments: Cobaki Lakes (14000) person and other West Tweed and Tugun residential developments, John Flynn Hospital, several Boyd Street sporting clubs, Desalination Plant construction, Gold Coast City Council rubbish tip clients, future Gold Coast Airport non-aviation development and general Tugun usage will expedite unacceptable levels of service for traffic users of Boyd Street. 32
Once traffic levels rise, the construction of a planned four-lane Boyd Street will add to the need for a four-lane bridge Overpass of the Tugun Bypass highway and rail corridor

*Considering the changed location of the two-lane Overpass proposal, which now straddles the NSW/QLD State border, the question is raised of who will pay for a future Boyd Street/Sandy Lane traffic Interchange. 33
The future interchange will need to provide for: a duplicated two-lane carriageway, a costly tunnel/overpass to cross rail, so as to connect the Tugun Bypass to the eastern 'on' and 'off' ramps to Boyd Street and also to NSW on/off ramps. The eastern ramps will provide access to John Flynn Hospital, Tugun and Tweed suburbs.

Requests for Information

Following my request for information from both the Tweed Shire Council and Queensland Main Roads I was assured that a CD document which covered contents of the large SEE document would be provided to assist with my enquiries. 34

Yesterday I was advised by phone from QDMR that the CD will not be posted until after the closing date for submissions. Therefore our submission is based on a rushed examination of exhibited documents.

Please give consideration to our submission and acknowledge receipt of this communication.

Yours sincerely

R W Murray

Richard W Murray
Secretary

COMMENTS FROM THE APPLICANT

Paragraph	Comment/Response
1	No comment required.
2	No comment required.
3	No comment required.
4	The BSO does not include an interchange, however the design is compatible with such a structure, if required in the future.
5 -9	No comment required.
10	<p>The following is an extract from the DEH referral for the BSO,</p> <p><i>The Boyd Street Overpass project once complete will carry road traffic from the Cobaki Lakes residential development east, over the Tugun Bypass (Pacific Highway) and the proposed Robina to Tugun Rail Line and into Tugun and the surrounding areas. The Overpass will create the only access to the residential development once the Tugun Bypass is complete.</i></p> <p>Review of the 2005 Gold Coast Street Directory indicates that Boyd Street (and therefore the BSO) is the only direct access route into the State of Queensland.</p> <p>The following is an extract of the <i>Tugun Bypass - Southern Community Liaison Group Meeting No.3</i> minutes, as undertaken on the 6 September 2006,</p> <p><i>Q: Will Tweed Shire Council require an interchange? I'm interested if the cost of the interchange will be passed onto the ratepayers of Tweed Shire Council? What are the current funding arrangements with Tweed Shire Council?</i></p> <p><i>A: The Development Application only covers an overpass. However, planning is compatible with an interchange being added in the future. The developers have lodged a deposit with Tweed Shire Council. A Deed of Agreement between Tweed Shire Council and Cobaki Lakes was signed in 1993 when a bond was given.</i></p> <p>No commitment has been given to construct an interchange.</p>
11	The design of the overpass would allow for construction of a future interchange. However, the timing for a future interchange is speculative with no commitment to construction provided.
12	No comment required.
13	No comment required.

Paragraph	Comment/Response
14	The Development Application for the BSO does not include an interchange. The Commonwealth Minister for Environment and Heritage has considered the information supplied within the referral and has decided that the proposal is not a Controlled Action. Further information was not sought prior to this decision and is therefore assumed to have been sufficient.
15	No comment required.
16	No comment required.
17	No comment required.
18	No comment required.
19	No comment required.
20	Development of an Integrated Plan of Management for the Long-nosed Potoroo has commenced and will detail those measures required to manage potential threats to this species/population. The first meeting of the respective stakeholder group was undertaken on 14 December 2006. Roles, responsibilities and timing for the implementation of management measures will be detailed within this integrated plan. All measures proposed within the <i>Tugun Bypass Species Impact Statement</i> will be implemented and within the timeframes specified within the Tugun Bypass Species Impact Statement.
21	Extensive consultation on Cultural Heritage has been undertaken (as part of the Tugun Bypass) regarding the area within and immediately adjacent to the Tugun Bypass road corridor. Cultural heritage was also assessed during impact assessment for the Boyd Street extension. Records indicate no known objects of cultural significance within the footprint of the proposed BSO. Commitments to implementing the Tugun Bypass Cultural Heritage Management Plan (CHMP) are provided within Table 4.3 of the SEE. Actions to manage any unexpected finds are detailed within this plan and are committed to within Table 5.1.
22	<p>Actions to manage cultural heritage have been determined through consultation with the local indigenous groups. This consultation was undertaken during development of the CHMP for the Tugun Bypass and is considered suitable (unexpected finds) for the BSO.</p> <p>Unexpected finds would be reported to the either NSW Department of Environment and Conservation or the QLD Department of Natural Resources and Water.</p>

Paragraph	Comment/Response
23	Known objects/areas of cultural heritage significance (within the proposed construction footprint) were not identified during impact assessment. As a precautionary measure, actions described within the CHMP for the Tugun Bypass would be implemented during clearing and grubbing and/or unexpected objects of significance identified. These measures are considered to be best practice and have been successfully implemented during construction of the Tugun Bypass.
24	Significant impacts on the environment of Commonwealth land are not anticipated during the construction or operation of the BSO. In his assessment, the Minister for Environment and Heritage has also considered this matter and determined that the proposed activity is not a Controlled Action. Grades within the area are low and soils able to be readily managed using standard and proven construction methods. The Cobaki Broadwater is distant to the proposed activity and is situated approximately 850 metres to the south.
25	No comment required.
26	Comment (by the proponent) on the general alignment of Boyd Street is not considered appropriate. This aspect may be best discussed, if required by the relevant local government authorities.
27-28	The BSO is approximately 650 metres in length, with 300 metres situated within NSW (with the first 90 metres of this length to be constructed by others). Importation of fill will be required to achieve the required approach grades and flood immunity. Cross drainage structures include the provision of a bridge (overpass) and a fauna culvert, which would provide an additional overland flow path during large hydrological events. Afflux as a result of construction is not anticipated. Storm water would be managed through the use of standard construction techniques (as to be identified in an Erosion and Sedimentation Control Plan) and by wetland basins during operation.
29	The significant impacts inferred by the Tweed Heads Environment Group Inc. are considered to be highly unlikely. An Environmental Impact Statement is not considered to be required as the proposed activity does not trigger the designated provisions for an EIS within the <i>Environmental Planning and Assessment Act 1979</i> . Great efforts have also been undertaken to integrate the proposed overpass within the existing footprint of Boyd Street – thereby minimizing environmental impacts. Standard and recognized controls would be implemented to prevent localized flooding and poor water quality.
30-33	Road hierarchy and traffic modelling details are currently available within the Development Control Plan No.17 – Cobaki Lakes. Further plans are not considered to be required.
34	No comment required.

(e) Public interest

It is in the public interest for the overpass to be constructed to facilitate the road network in the Shire. It is also in the public interest to manage the impacts of the overpass to minimise deleterious effects. The proposed conditions and mitigations measures will achieve a balance between the required infrastructure and environmental protection.

POLICY IMPLICATIONS:

The absence of a link through to Boyd Street will have implications for Council's Traffic Management and Urban Development Strategies.

OPTIONS:

1. Approve the application as per the recommendation.
2. Refuse for specified reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has a right of Appeal in the NSW Land and Environment Court if they are dissatisfied with the determination.

POLICY IMPLICATIONS:

The absence of a link through to Boyd Street will have implications for Council's traffic management and urban development strategies.

CONCLUSION:

The competing objectives of traffic/growth management and environmental protection are the key aspects of the proposal. A range of conditions is recommended so that a balanced outcome is delivered.

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.

7 [PD-PC] Development Application DA06/0847 for a 5 Lot Subdivision at Lot 22 DP 617126, No 26-30 Wollumbin Street, Tyalgum

ORIGIN:

Development Assessment

FILE NO: DA06/0847

SUMMARY OF REPORT:

Council is in receipt of an application to subdivide Lot 22 DP 617126, 26 – 30 Wollumbin Street, Tyalgum into 5 lots. The subject land is currently 4055m² in size with frontages to Wollumbin Street and Balluna Street. The proposed lots range in size from 666m² - 1071m² and are predominately irregular in shape.

The majority of the land parcel is flood prone, with the proposal seeking future pole homes to alleviate this issue, as opposed to fill. Significant concerns have been raised by Council's Director of Engineering and Operation as to any dwelling houses' compatibility with flood inundation and has accordingly requested the proposed lot layout be amended to allow flood free access and dwelling envelopes.

The applicant has refused to amend the submitted design to include these changes and as such the proposal is recommended for refusal.

RECOMMENDATION:

That Development Application DA06/0847 for a 5 lot subdivision at Lot 22 DP 617126 No 26-30 Wollumbin Street, Tyalgum be refused for the following reasons:

- 1. Pursuant to Section 79C(1)(a)(iii) the development proposal has not demonstrated due consideration or compliance with Tweed Shire Development Control Plan No.16 - Subdivisions Manual, as it relates primarily to development sites that are and will remain flood liable must be excluded from uses that are incompatible with inundation.**
- 2. Pursuant to Section 79C(1)(c) the development site is not considered suitable for the proposed development, as evidenced by the non compliances with Council's planning requirements.**
- 3. Pursuant to Section 5 - Objects, of the Environmental Planning and Assessment Act, 1979 the proposed development cannot be determined to satisfy subsection (a)(ii), the orderly and economic use and development of the land.**

REPORT:

Applicant: Chris Lonergan Town Planner
Owner: G3 Investment Property Developers Pty Limited (previously owned by Tweed Shire Council)
Location: Lot 22 DP 617126, No. 26-30 Wollumbin Street Tyalgum
Zoning: 2(d) Village
Cost: Nil

Background

Council is in receipt of an application to subdivide Lot 22 DP 617126, 26 – 30 Wollumbin Street, Tyalgum into 5 lots. The subject land is located within the heart of the Tyalgum Village and is significant in size when considering its adjoining parcels. Council was the previous landowner of the parcel and only recently sold the property. A review of the contract of sale includes the below purchasers' acknowledgements –

- (a) *Subject to Section 52A of the Conveyancing Act 1919 and to the regulation made thereunder and to the Conveyancing (Sale of Land) Regulation, 2000 the Purchaser acknowledged, agrees, represents and warranties to the Vendor that:*
- (i) *He has not relied on any warranty or representation made or any conduct engaged in by the Vendor or any person on behalf of the Vendor about the subject matter of this Contract, except as provided in this Contract;*
 - (ii) *He has relied entirely on his own enquiries relating to the property;*
 - (iii) *He has not relied on any warranty or representation made or any conduct engaged in by the Vendor or any person on behalf of the Vendor as to the fitness or suitability of the property for any particular purpose or as to any financial return or income to be derived from the property;*
 - (iv) *He has not induced to enter into this Contract by any warranty, representation or conduct of the type referred to in Special Conditions 2(a)(i) or 2(a)(iii); and*
 - (v) *He has been given the opportunity to seek independent legal advice and satisfied himself as to the obligations and rights of the Purchaser under this Contract.*

The subject land is currently 4055m² in size with a 67.19m frontage to Wollumbin Street, a 60.35m frontage to Balluna Street and a 67.19m frontage to an unnamed rear laneway. The site is constrained by a 4m wide drainage easement, traversing the site, affecting the provision of regular lot layouts that serve functional purpose. The site levels range from a high of 57.0m AHD at the southern corner of the site to a low of 53.0m AHD at the eastern corner of the site. Council has adopted a highest recorded flood level of 55.8m AHD within Development Control Plan No. 5 – a level that the majority of the sites is below. The flooding aspects of the proposal as discussed in detail in Section (a)(iii) of this report. Whilst some vegetation is located on the site, the land is not considered to support important habitat for threatened or endangered species or communities.

The proposal seeks to subdivide the land as follows:

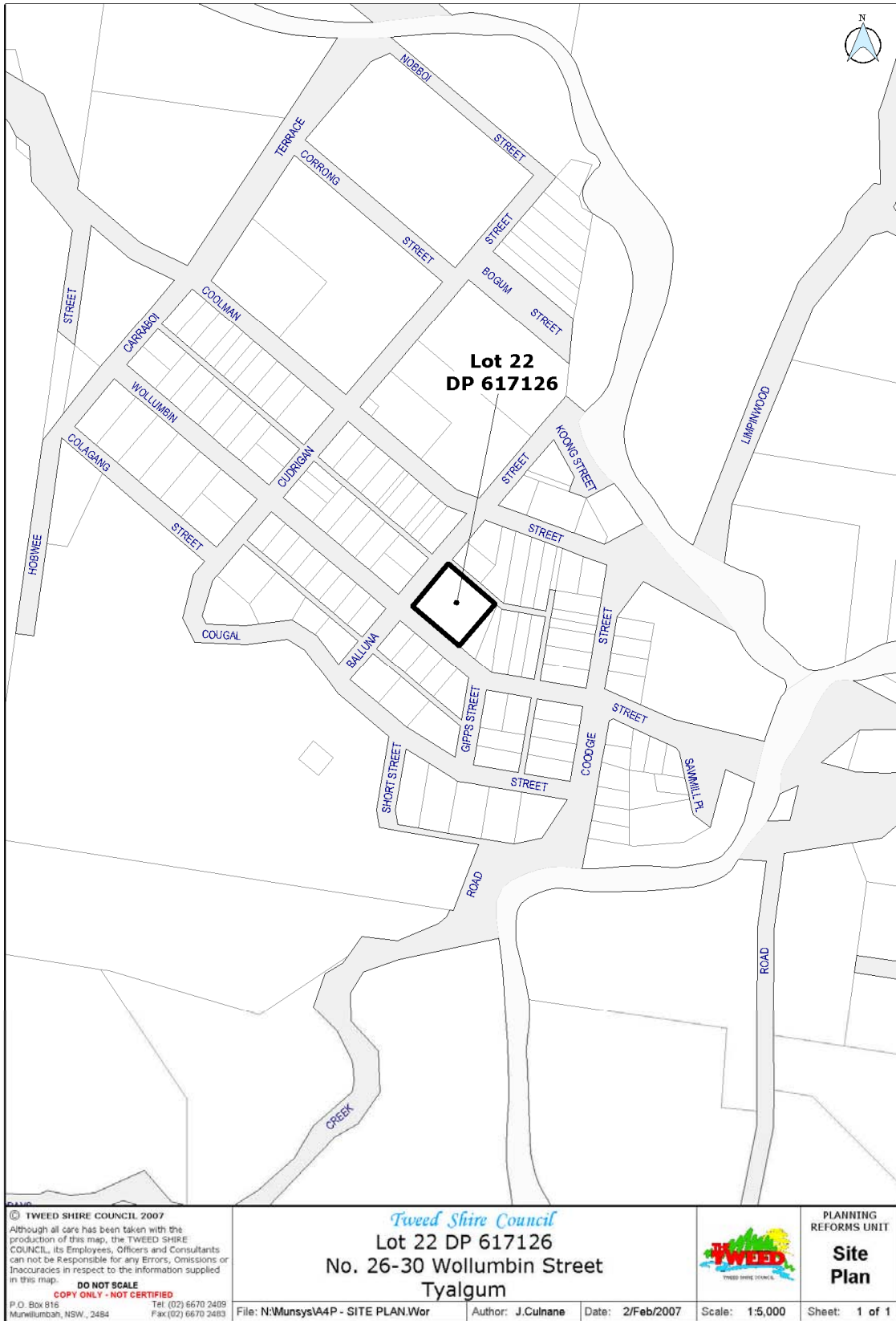
Lot 1 – Proposed Lot 1 involves a triangular lot layout with frontages to Balluna Street and an unnamed laneway at the rear of the parent parcel. Lot 1 encompasses 1071m² of area, approximately 391m² of which comprises the lands drainage easement. The submitted plans indicate that the entire lot will be below Council's adopted flood level. It is anticipated that Lot 1 will utilise Balluna Street as it's means of vehicular access.

Lot 2 – Proposed Lot 2 involves a battleaxe lot, with the battleaxe handle fronting Wollumbin Street, the lot also fronts the unnamed laneway. Lot 2 comprises a site area of 991m², 180m² of which is battleaxe handle. Similarly to Lot 1, the developable area of Lot 2 is located below Council's adopted flood level.

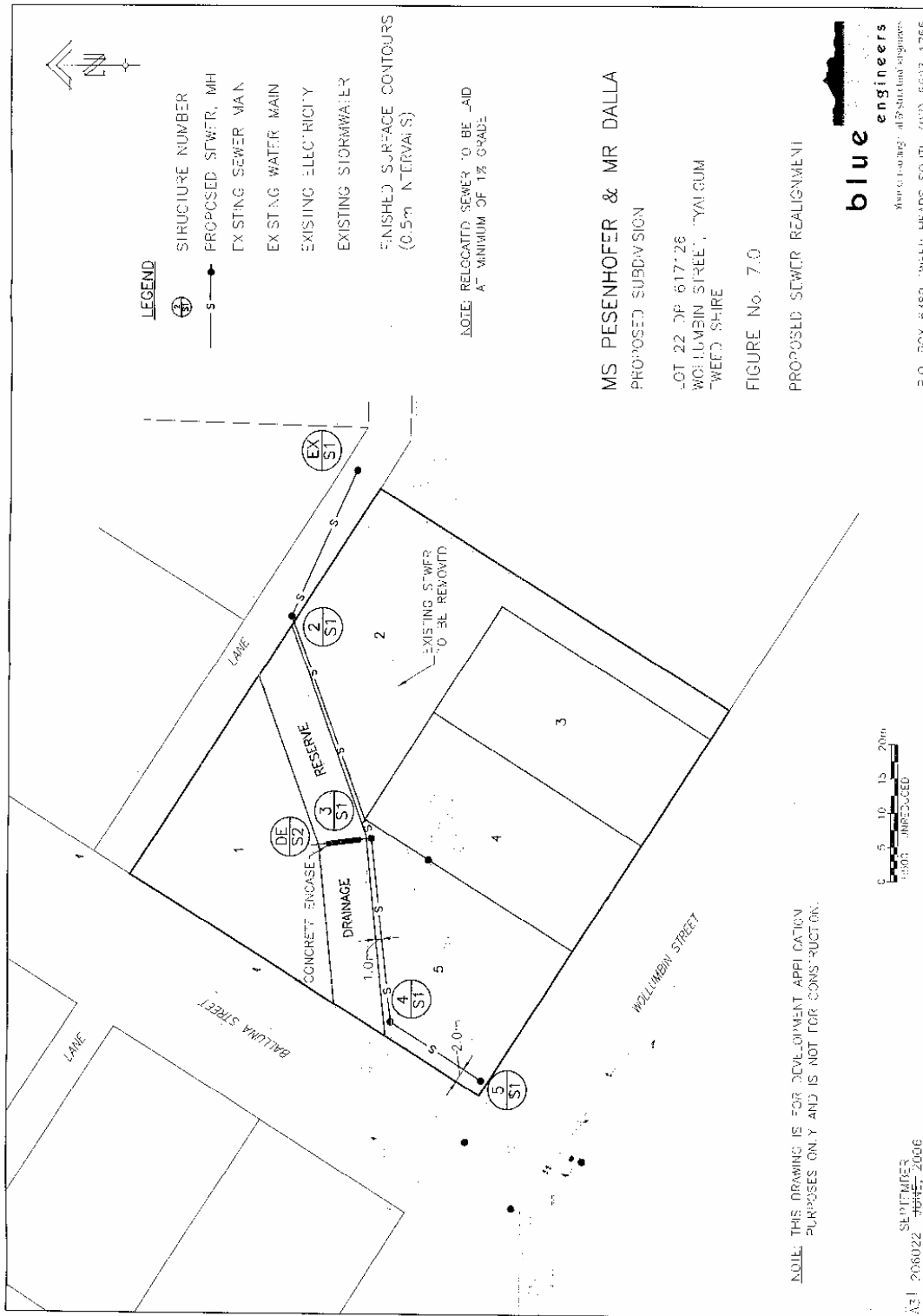
Lots 3 & 4 – Proposed Lots 3 & 4 are both regular shaped allotments, both comprising land areas of 666m² via 18.5m frontages to Wollumbin Street and 36m lot depths. The proposed building envelopes for Lots 3 & 4 are partially located above Council's design flood level.

Lot 5 – Proposed Lot 5 comprises an irregular lot shape with a 25.19m frontage to Wollumbin Street, a 36m-lot depth to adjoining Lot 4 and a 16.3m frontage to Balluna Street. Lot 5 comprises a land area of 660m². Similarly to Lots 3 & 4, the building envelope for Lot 5 is partially located below Council's adopted flood level.

SITE DIAGRAM



PROPOSED SUBDIVISION LAYOUT PLAN:



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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 2(d) village under the Tweed LEP 2000. The primary objective of the 2(d) zone is as follows:

"to provide for residential development and a full range of services and facilities traditionally associated with a rural village which is of a design and scale that makes a positive contribution to the character of the village."

The proposed subdivision is permissible within the zone and meets the minimum lot size requirements specified. During the assessment of the application some concern has been raised regarding the proposals contribution to the character of the area. This matter has been discussed extensively with section (b) of this report, concluding that with appropriate Section 88B requirements, the character of the locality can be retained.

Clause 15 of TLEP requires arrangement satisfactory to the consent authority in relation to essential services. The subject land has access to essential services.

North Coast Regional Environmental Plan 1988

Satisfactory

State Environmental Planning Policies

SEPP No. 44 - Koala Habitat

The proposal has been assessed against the provisions of SEPP 44 and is considered satisfactory.

SEPP No. 55 – Remediation of Land

Council's assessing Environment and Health officer has not yet finalised an assessment against the requirements of SEPP 55. In this regard further assessment will be undertaken should Council wish to continue processing the application.

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

The proposal is not considered to be affected by any draft EPIs.

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

Development Control Plan No. 5 – Development of Flood Liable Land

DCP 5 provides Council's guidelines for development of flood liable land. For the purposes of this policy, the requirements for Tyalgum are contained within 'Section 9.0 The Rural Villages and the Clarrie Hall Dam Catchment'.

DCP 5 prescribes a highest recorded flood level of 55.8m AHD, which, as confirmed by Council's assessing Infrastructure Engineers, is to be utilised as the adopted as the design flood level. Accordingly, this requires the finished habitable floor level to be at least 56.3m AHD. It is noted that DCP 5 does not discuss, nor contain any prescriptive requirements for subdivision within the rural villages.

Applying these requirements, the building envelopes of proposed lots 3, 4 & 5 are located partially below the adopted design flood level, the building envelope of proposed lot 1 will be located approximately 0.8m – 2.05m below the adopted level and the building envelope for proposed lot 2 approximately 1.7m – 2.2m below the adopted design flood level.

In light of the above, a letter was sent to the applicant on 20 November 2006, informing them that a large proportion of the subject site is located below the design flood level (the original SEE submitted by the applicant stated that the site was not flood liable). Further, the applicant was required to address DCP 5 and indicate how future residential development of the land can be achieved whilst maintaining the objectives of DCP 5.

On 4 December 2006 the applicant responded and is detailed for information.

Subsequent to the above information being received, a meeting was held with Council's Director of Engineering Services and Manager of Development Assessment where the requirements of DCP 5 – and also DCP 16 (Subdivision Manual) were discussed in relation to the proposal. Upon reviewing the requirements of DCP No. 16, particularly Section 4.2.3, which reads:

'Development sites that are and will remain flood liable must be excluded from uses that are incompatible with inundation.'

It was concluded that a dwelling house is not compatible with flood inundation.

The applicant was then informed accordingly and requested to review the layout to provide a flood free building pad and flood free access from the proposed dwellings to the street.

In response, the applicant has submitted the following information:

'I refer to the above and your letter of the 11th January 2007 advising that the subdivision should be designed to meet your recent interpretation of section 4.2.3 of DCP 16, where in 'Development sites that are and will remain flood liable must be excluded from uses that are incompatible with inundation'.

The concerns raised by this Clause are overcome by the DCP No. 5 report submitted to Council dated the 29th Nov 2006, which shows clearly that the development proposed IS NOT INCOMPATIBLE with inundation: -

"No site works are proposed that will alter the existing drainage characteristics of the site, and the proposed subdivision of this large urban allotment will not alter local flood flow characteristics. The development comprises a small percentage increase in building cover within the flood storage area, being limited in the main to foundation structures beneath proposed dwellings. This reduces the development potential to displace flood waters.

Future residential dwellings will be designed with mostly open under floor areas to ensure that flood flow is not impeded, with minimum floor levels needing to be 56.3m AHD.

It is envisaged that future construction of dwellings will be in the form of elevated buildings on pole type foundations, This type of design will permit the easy passage of flood waters, and on this basis it is considered that the residential development following this subdivision, can occur without detracting from the flood flow drainage characteristics of the valley floor, and without adversely impacting upon the drainage characteristics of adjacent properties.

These design features ensure minimal impact on the flood storage capacity of the valley floor, thus preventing aggravation of flooding within the general catchment."

In addition to this a flood evacuation plan has been provided showing that all vehicles can be moved to flood free Wollumbin Street in the case of the 1 in 100 year flood.

DCP No. 5 does not in total prohibit subdivision within flood prone urban areas, as infill urban subdivision is specifically catered for in residue lands at Chinderah and Tyalgum. This is on the provision that no new roads are created and that the new lots have frontage to existing constructed roads.

This is the case with this application, and as such this site meets infill development provisions already supported by Council in other areas of the Tweed Shire.

In addition to this developments compliance with general and existing provisions of the Tweed LEP and DCP No. 5 for infill development in flood prone urban lands, it most importantly meets the infill subdivision provisions of the North Coast REP, i.e,

41 Objectives

The objectives of this plan in relation to housing are to promote the provision of a range of adequate, affordable and suitable housing to meet the needs of the regions population

43 Development Control – residential development

(1) The council shall not grant consent to development for residential purposes unless:

(a) it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,

On this basis it would be contrary to the requirements of the REP not to optimize the allotment yield from the site.

As detailed, all allotments are well above the minimum 450m² set by Council for this zone, and most importantly all allotments are large enough to contain future dwellings with adequate land area remaining for open space yard and recreation areas within each allotment.

On this basis the design maintains the residential integrity of the area, and provides allotments which will maintain the areas general character. As such it contributes to the context and setting of the locality, whilst meeting affordable housing needs and the design objectives set within the North Coast Regional Environmental Plan.'

This response has been reviewed by Council's Director of Engineering Services who has maintained that a dwelling site is not a compatible land use for land that is liable to flood inundation. Accordingly, the proposal should be supported until such time that a flood free dwelling site and associated flood free access can be achieved.

Development Control Plan No. 16 – Subdivision Manual

The proposal has been assessed against the requirements of DCP 16 as satisfactory, excluding Section 4.2.3, which relates to development sites in flood liable land.

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

Satisfactory

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

Context & Setting

The Tyalgum Village has a very distinct context and setting, achieved through larger lot sizes, a traditional rural built form and features, and reduced housing density.

Many of the streets within Tyalgum village do not have formal kerb and gutter (although Council has recently undertaken works to provide kerb & gutter along Wollumbin Street) and the majority of residential lots involve traditional Queenslander and Cottage building design through the use of large veranda's, corrugated iron roofing, light external colours, lightweight building materials and open car parking facilities. In addition, the majority of lot sizes range between 800 – 1000m² and are principally of regular shape, as well as feature extensive use of established landscaping throughout the lots.

In light of the distinctive features possessed by the village, the lack of residential design guidelines for the area, the proposal's irregular lot layout and lot sizes, concern was raised with the applicant that the subdivision did not adequately contribute to the context and setting of the area. In response, the applicant provided the following justification:

'The infill nature of the subdivision provides a pattern of settlement which achieves the underlying objectives of the North Coast REP, i.e.

41 Objectives

The objectives of this plan in relation to housing are to promote the provision of a range of adequate, affordable and suitable housing to meet the needs of the region's population

43 Development Control – Residential Development

(1) The Council shall not grant consent to development for residential purposes unless:

(a) it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,.

On this basis it would be contrary to the requirements of the REP not to optimize the allotment yield from this site. As detailed, all allotments are well above the minimum 450m² set by Council for this Zone, and most importantly all allotments are large enough to contain future dwellings with adequate land area remaining for open space yard and recreation areas within each allotment.

On this basis the design maintains the residential integrity of the area, and provides allotments which will maintain the areas general character. As such it contributes to the context and setting of the locality, whilst meeting affordable housing needs and the design objectives set within the North Coast Regional Environmental Plan.'

In addition, further discussions have been held with the applicant regarding a Section 88B Restriction for building design on any future lots. In this regard the applicant has suggested the following design guidelines:

- A. *Form – Buildings should adopt roof forms that are steep pitched and either gable or hipped.*
- B. *Scale – New buildings should observe the general eave and roof height design of surrounding buildings.*
- C. *Verandas – Verandas are an important element in the vista across the area, and their inclusion is encouraged.*
- D. *Materials – Timber buildings with metal roofs are encouraged as this conforms with the design characteristics of the area.*

The above guidelines are considered to be a positive start to ensuring the context & setting of the locality is maintained.

Should Council opt to continue assessment of the application, it is recommended that the further assessment should include development of these design principles and requirements. In particular, the development of more prescriptive design parameters, dealing with areas such as roofing materials, colours, fence height and materials, screening of the underside of dwellings and the provision of verandas.

(c) Suitability of the site for the development

In light of the flooding issues the development is considered unsuitable as proposed.

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

The proposal was notified to adjoining land owners for a period of 14 days, during which, 1 submission was received from the Tyalgum District Community Association (TDCA). The submission, whilst raising no objection to the subject proposal, requested that all future dwelling applications over the land be referred to the TDCA 'Built Environment Project Team' for review. The submission also requests that TDCA be consulted on all future DAs affecting the Tyalgum area.

It is anticipated that any residential design requirements would be referred to TDCA for their review and comment.

(e) Public interest

The proposal is not considered consistent with the public interest as it undermines the integrity of the DCP 16 and 5 by supporting the creation of dwelling houses in flood prone land.

OPTIONS:

1. Refuse the application for the reasons provided in this report
2. Council advise the applicant that the proposed subdivision is not acceptable unless flood free dwelling sites and access can be provided.
3. Continue assessment of the application as currently proposed with the determination delegated to the General Manager or his delegate.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the right to appeal the determination in the NSW Land and Environment Court

POLICY IMPLICATIONS:

Nil

CONCLUSION:

In view of the applicant's refusal to amend the application to address flooding issues, the application is recommended for refusal.

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. Correspondence received from Chris Longergan Town Planner, dated 29 November 2006 (DW 1504232)
-

8 [PD-PC] Draft LEP 2000 Amendment 75 – Reclassification of Land on Lot 1 DP1087664, Bottlebrush Drive, Pottsville

ORIGIN:

Development Assessment

FILE NO: GT1/LEP/2000/75 Pt`

SUMMARY OF REPORT:

On 3 August 2005, Council's Administrators resolved to engage planning consultants to prepare an LEP amendment and reclassification of the subject site with funding being obtained from existing funding for the Koala Beach Reservoir.

Tenders were called for the preparation of draft LEP Amendment 75 to reclassify an area of land that is now identified as Lot 1 DP1087664 Bottlebrush Drive, Pottsville from Community Land to Operational Land.

A total of eight (8) lump sum tenders were received by the advertised closing date of 20 September 2006. This report provides a recommendation on the preferred tenderer.

RECOMMENDATION:

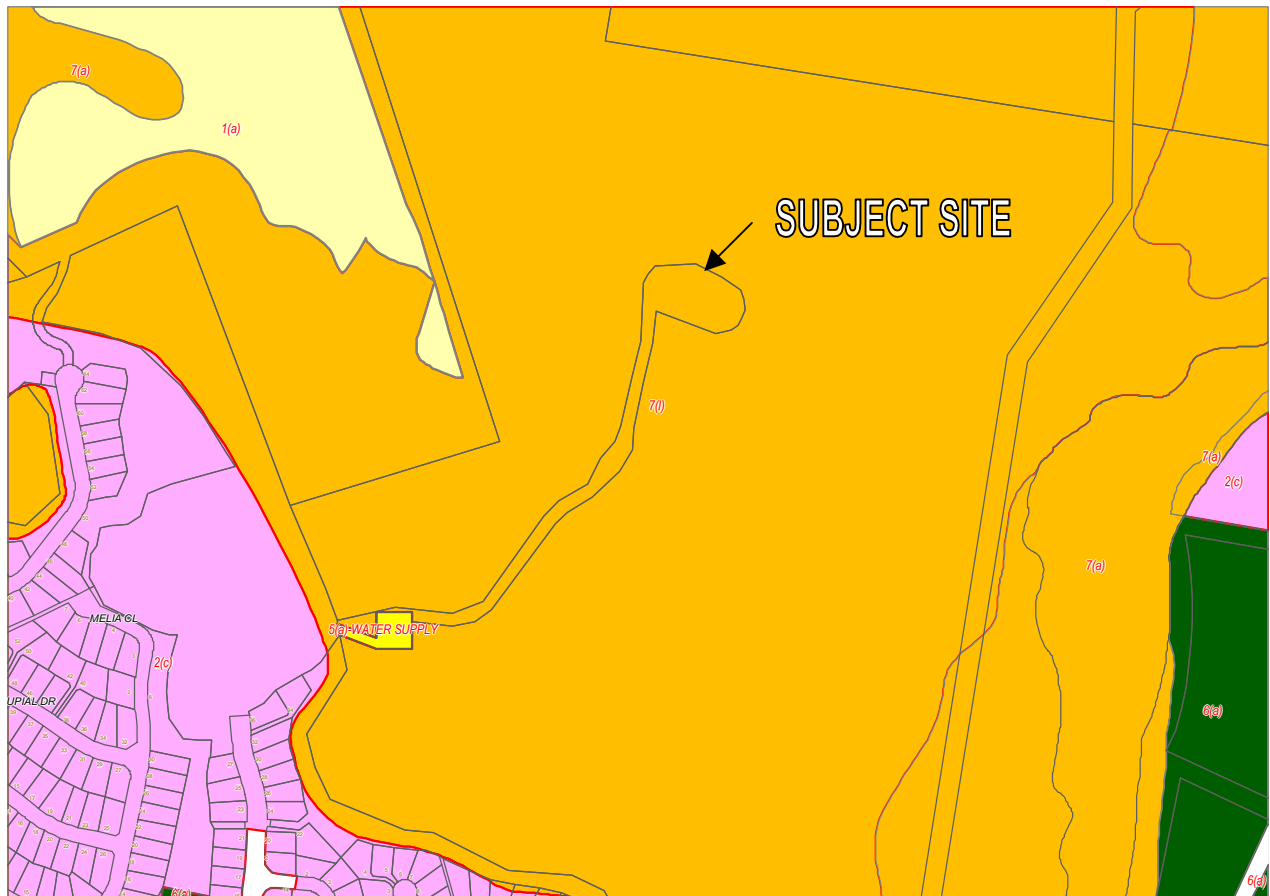
That Council awards the contract DQ2006-120 Draft LEP 2000 Amendment 75 – Reclassification of Land on Lot 1 DP1087664 to LandPartners for the lump sum price of \$6,503.20 (including GST).

REPORT:

Several reports have been before Council with regard the reclassification of the subject site, to enable the construction of a new 5ML water reservoir for the Koala Beach residential estate. The land is zoned 7(l) Environmental Protection (Habitat).

The previous reports identified and considered a number of other possible sites and options. However, from an economic and environmental perspective, the subject site was considered to be the most desirable location for a future reservoir to service the expanding population on the Tweed Coast.

All public land must be classified as either community or operational land in accordance with Part 6 of the Local Government Act. Section 30 of the LGA enables Council to reclassify community land as operational land. The subject site (currently classified as community land) needs to be reclassified as operational land prior to constructing the reservoir and access road.



On 3 August 2005, Council resolved that... *'Council engages planning consultants to prepare an LEP amendment and reclassification of the site with funding being obtained from the existing funding for the Koala Beach Reservoir'*.

As a result, tenders were called for the preparation of the draft LEP 2000 Amendment 75 to reclassify an area of land that is now identified as Lot 1 DP1087664 Bottlebrush Drive, Pottsville from Community Land to Operational Land.

The scope of the tender requires the Consultant to:

- Process draft Tweed Local Environmental Plan 2000, Amendment No 75 in accordance with the Environmental Planning and Assessment Act 1979 and the Local Government Act 1993;
- Undertake a site inspection of the subject site with Council staff at the inception of the project;
- Prepare all exhibition material, including the written instrument, advertising material, explanatory notes, and checklist of the draft LEP's consistency with relevant State Environmental Planning Policies, 117 Directions, and the North Coast Regional Environmental Plan;
- Provide one (1) digital copy and two (2) hardcopies, in a format acceptable to Council, of the draft LEP and accompanying exhibition material to Council's Director of Planning and Development for initial discussion and review by the Director before being finalised for exhibition;
- Provide one (1) digital copy and four (4) hardcopies, in a format acceptable to Council, of the draft LEP and accompanying exhibition material to Council's Director of Planning and Development once finalised for exhibition;
- Organise, hold and run a public hearing into the proposed reclassification as required by Section 29 of the Local Government Act 1993;
- Prepare a formal report to Council that addresses the exhibition of the draft Plan, the public hearing, the submissions received (if any) and which recommends any amendments to the draft Plan if warranted; and
- Prepare a formal report that will be forwarded to the Department of Planning in accordance with Section 68 of the Environmental Planning and Assessment Act 1979.

A total of eight (8) lump sum tenders were received for the Lump Sum Contract by the advertised closing date of 20 September 2006. The tenderers were:

BOSKAE
Darryl Anderson Consulting
GeoLINK
GHD
Harper Somers O'Sullivan
Jim Glazebrook & Associates
LandPartners
Planit Consulting

Land Partners tender is recommended for acceptance. LandPartners have worked in consultation with Council in the past with satisfactory results.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council's Engineering & Operations Division will be responsible for funding the project. They have identified an approximate figure of \$7,000 is to be allocated for the reclassification of the land. The recommended tender by LandPartners is within Council's allocated budget.

POLICY IMPLICATIONS:

Nil.

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. (Confidential) Tender evaluation document (DW 1535094)
-

9 Development Application DA06/0266 for a Mortuary and Crematorium and LEP Amendment at Part Lot 704 DP 1000580, No. 9394 Tweed Valley Way, Chinderah

ORIGIN:

Development Assessment Unit

FILE NO: DA06/0266 Pt 1; GT1/LEP/2000/83 Pt1

SUMMARY OF REPORT:

An application under s 72J of the *Environmental Planning and Assessment Act 1979* for a crematorium, mortuary and enabling draft Local Environmental Plan has been submitted to Council and is the subject of this report. The development application is accompanied with a request for a change to the Tweed LEP, Schedule 3, to include the land use, which is otherwise prohibited.

The development application and draft LEP have been publicly exhibited and notified to relevant government agencies. Public submissions and representations from the government agencies have been received.

The justification for the draft Plan is largely in the public exhibition documentation. This report, required under s 68 of the Act assesses the public and agency submissions. The assessment is that these submissions do not warrant the cessation of the plan making process nor refusal of the proposed development.

RECOMMENDATION:

That: -

- 1. The Director of Planning and Development, in accordance with instrument of authorisation to exercise delegation issued by the Director-General of the Department of Planning dated 16 August 2006, obtain any necessary advice from Parliamentary Counsel in respect of the draft Plan and prepare and furnish a section 69 report in respect of the draft *Tweed Local Environmental Plan 2000* (Amendment No. 83), as exhibited, to the Minister administering the *Environmental Planning and Assessment Act 1979* requesting that the Plan be made in accordance with Section 70 of the said Act.**
- 2. Upon gazettal of draft Amendment No. 83 to the *Tweed Local Environmental Plan 2000*, Development Application DA06/0266 for a mortuary and crematorium on Part Lot 704 DP 1000580, No. 9394 Tweed Valley Way, Chinderah be approved subject to the following conditions:**

DEFERRED COMMENCEMENT

This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 12 months of the date of notification.

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 67 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

SCHEDULE "A"

Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 67 of the Regulations as amended.

- A. A preliminary Contamination Investigation, prepared by a suitably qualified person, shall be provided to Council for approval by the Director Environment Community Services, and it is to clearly and unambiguously state whether or not the site is suitable for the intended use.

SCHEDULE B

NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.

GENERAL

1. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia. [GEN0115]
2. The development shall be completed in accordance with the all relevant documentation referred to in the correspondence prepared by Jim Glazebrook & Associates and which is held on Council Files DA06/0266 and DA05/0036 and development plans nos. 2411-P2B, 2411-P3A and 2411-P4, prepared by 'The Cad Company' dated 26 February 2006, except where varied by the conditions of this consent. [GEN0005]
3. All works shall comply with the Council approved Acid Sulfate Soils Management Plan for Minor Works.
4. Soils shall not be transported or removed outside the boundary of the property.

5. The facility shall be constructed and operated in accordance with the Public Health (Disposal of Bodies) Regulation, 2002 and the Guidelines for the Funeral Industry, NSW Health, 2002. [GENNS01]
6. The area where 'uncoffined' bodies are transferred from the vehicle reception area to the preparation room shall be screened from public view to the satisfaction of the Director Environment and Community Services.
7. At least one separate hand basin shall be provided that is hands free and provided with adequate hot and cold water.
8. Surfaces in relevant handling and processing areas shall be solid and impervious and easily cleanable.
9. The crematorium activities shall be separated from the existing facility (particularly food preparation and consumption areas) to the satisfaction of the Director Environment and Community Services. [GENNS02]
10. Vehicle corteges/processions to and from the site are prohibited for the purposes of this consent. [GENNS03]
11. Advertising structures/signs to be the subject of a separate development application, where statutorily required. [GEN0065]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

12. Section 94 Contributions

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

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

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

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

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

(a) Tweed Road Contribution Plan: \$9,531.90
S94 Plan No. 4 (Version 4.0)
Sector 6 - Kingscliff

[PCC0215]

13. 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.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water DSP2: 0.95408 ET @ \$4598 \$4,387

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.

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

[PCC0265/PSC0165]

14. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for approval by the General Manager or their Delegate.

[PCC0465]

15. The developer shall provide 30 parking spaces including parking for the disabled in accordance with DCP2, AS 2890 and Austroads Part 11. in addition to the parking requirements tabled within development consent 92/0209.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0065]

16. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for approval.

[PCC0465]

17. The site is to be filled to a minimum level of RL 3.6m 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 filling on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0675]

18. Prior to the issue of a Construction Certificate the following detail in accordance with Councils adopted Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

(a) copies of compliance certificates relied upon

(b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:

- earthworks
- stormwater drainage
- landscaping works

- sedimentation and erosion management plans
- location of all service conduits (water, sewer, Country Energy and Telstra)

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

[PCC0985]

19. Permanent stormwater quality treatment shall be provided in accordance with the following:

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

[PCC1105]

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

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

will not be approved until prior separate approval to do so has been granted by Council under section 68 of the Local Government Act 1993.

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

[PCC1145]

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

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

[PCC1155]

PRIOR TO COMMENCEMENT OF WORK

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

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

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

[PCW0215]

23. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.

[PCW0225]

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

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

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

[PCW0255]

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

- (a) Details of the proposed method to be used are to be submitted to and approved by the Principal Certifying Authority prior to start of works; and
- (b) Certification of the works performed by the person carrying out the works is to be submitted to the PCA; and
- (c) 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.

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.

[PCW0775]

26. Prior to the commencement of works sedimentation and erosion control measures shall be installed to the satisfaction of the Director Environment Community Services.

[PCWNS01]

27. 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.

Please note that this sign is to remain in position for the duration of the project.

[PCW0985]

DURING CONSTRUCTION

28. 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]

29. 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]

30. An automatic fire detection and alarm system, designed to ensure the occupants are given adequate warning so they can evacuate the building in an emergency, must be installed in Class 2 and 3 buildings and Class 4 part of a building in accordance with the provisions of Specification E2.2a of the Building Code of Australia. Smoke alarms must be installed:
- (a) within each sole occupancy unit, located on or near the ceiling in any storey -
 - (i) containing bedrooms -
 - * between each part of the sole occupancy unit containing bedrooms and the remainder of the sole occupancy unit; and
 - * where bedrooms are served by a hallway, in that hallway; and
 - (ii) not containing any bedrooms, in egress paths; and
 - (b) in a building not protected with a sprinkler system, in public corridors and other internal public spaces, located in accordance with the requirements for smoke detectors in AS 1670 and connected to activate a building occupant warning system in accordance with Specification 2.2a(6) of the Building Code of Australia which states:

A building occupant warning system must comply with Clause 3.22 of AS 1670 to sound through all occupied areas except-

- (c) in a Class 2 and 3 building or Class 4 part provided with a smoke alarm system:
 - (i) the sound pressure level need not be measured within a sole occupancy unit if a level of not less than 85dB(A) is provided at the door providing access to the sole occupancy unit; and
 - (ii) the inbuilt sounders of the smoke alarms may be used to wholly or partially meet the requirements.

A Certificate of Compliance is to be submitted to the PCA prepared by the licensed Electrical Contractor certifying that the installation complies with the above, prior to occupation of the building.

[DUR1245]

31. All materials used in the building must comply with the smoke developed and spread of flame indices specified in Specification C1.10 of the Building Code of Australia.
-

Note: Many materials including some timbers such as western red cedar do not comply and it is the applicants responsibility to ensure that all materials to be used are within the criteria specified.

[DUR1275]

32. Exits are to be provided so that no point on the floor of the building shall be more than 20 metres from:

(a) an exit; or

(b) a point from which travel in different directions to two exits is available in which case the maximum distance to one of those exits shall not exceed 40 metres.

[DUR1285]

33. Exit signs which comply with Part E4.5 of the Building Code of Australia and are designed in accordance with Part E4.8 of the Building Code of Australia and are to be installed. Mounting heights shall be in accordance with AS2293.1.

[DUR1295]

34. Emergency lighting to comply with Part E4.2 of the Building Code of Australia shall be provided. Details of the system to be used and a certificate from the electrical engineer to certify that the system will comply with all relevant requirements of Part E4.4 of the Building Code of Australia and AS 2293.1 are to be submitted to the PCA prior to installation.

[DUR1305]

35. Doors forming exits, paths of travel to exits and parts of exits shall comply with the relevant provisions of D2.19 and D2.20 of the Building Code of Australia.

[DUR1315]

36. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428.

[DUR1685]

37. Where a building or part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428.

[DUR1695]

38. 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]
39. 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]
40. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard. [DUR2535]
41. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
 - * 50⁰C in all other classes of buildings.
- A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works. [DUR2555]
42. 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]

43. On completion of the filling work, all topsoil to be respread and the site to be grassed and landscaped.

[DUR0755]

44. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council's General Manager or their Delegate.

[DUR0985]

45. All work associated with this approval is to be carried out so as not to impact on 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]

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

[DUR1025]

47. All shelving, benches, fittings and furniture on which appliances and utensils are positioned within the premises must be of durable, smooth, impervious material capable of being easily cleaned.

[DUR1605]

48. The walls and floors of the premises must be lined, sealed or sheeted with an approved smooth impervious material capable of being easily cleaned.

[DUR1615]

49. 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]

50. 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 approved by the Director Environment and Community Services.

[DUR2215]

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

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

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

[DUR2375]

52. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads.

[DUR2415]

53. The On-site Sewage Management System shall be installed in accordance with an Approval to Install an On-site Sewage Management System under Section 68 of the Local Government Act 1993.

[DUR2775]

54. The provision of 30 off street car parking spaces including parking for the disabled where applicable in addition to the parking requirements tabled within DA92/0209. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls, the Building Code of Australia and AS 2890.

[DUR0085]

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

[DUR0985]

56. All work associated with this approval is to be carried out so as not to impact on 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]

57. A certificate is to be submitted by a Registered Surveyor certifying that all floor areas are constructed above 3.6 metres AHD. Certification of those levels by a registered surveyor must be submitted to the Principal Certifying Authority prior to proceedings past floor level to ensure that the floor is above flood level.

[DUR1365]

58. Provision to be made for a flood free storage area for stock and equipment susceptible to water damage.

[DUR1395]

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

[DUR2015]

60. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act.

[DUR2625]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

61. 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]

62. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

63. Portable fire extinguishers containing an extinguishing agent suitable for the risk being protected must be installed in accordance with Australian Standard AS 2444 "Portable Fire Extinguishers - Selection and Location" and Part E1.6 of the Building Code of Australia.

[POC0515]

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

[POC0525]

65. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

66. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval. [POC0615]
67. All wastes, chemicals and fertiliser shall be collected, stored and disposed to the satisfaction of the Director Environment Community Services. Materials shall not be permitted to flow or percolate to any watercourse.
68. Lighting shall not be permitted to impact the amenity of the any premise.
69. Hours of operation shall be limited to:
- * Mortuary - 24 hours per day, 7 days per week
 - * Crematorium - 7 days per week, 9.00am-9.00pm
 - * Private ceremony as for crematorium.
 - * No operations are to be carried out on Sundays or Public Holidays
 - * All deliveries and pickups relating to the business are to occur within the approved hours
70. Mortuary waste water only shall be directed to the proposed separate on-site sewerage management facility. All toilet wastes shall be directed to the existing system.
71. All clinical wastes shall be collected, stored and disposed via the Council approved clinical waste collection service.
72. The crematory shall be kept clean, tidy and in good working order at all times.
73. Gaseous discharges from any stack or cremation process shall not be permitted to impact the amenity, including by way of visible emissions, of the area and shall comply with Schedule 6 of the Protection of the Environment operations (Clean Air) Regulation 2002 [USENS01]
74. No residential or caretakers residences is approved by this consent.
75. No places of assembly or area of public ceremony or the like is approved by this consent, except for private ceremony within the 'Melaleuca Room' [USENS02]

USE

76. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust, fumes or the like.

[USE0125]

77. All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997.

[USE0135]

78. Except as may be expressly provided in the approval, the approval holder must comply with section 120 of the Protection of the Environment Operations Act 1997 prohibiting the pollution of waters.

[USE0155]

79. All external artificial lighting shall be shielded where required to the satisfaction of Councils General Manager or his delegate to ensure that the spill of light or glare from such lighting does not create a nuisance to any adjoining or neighbouring premises.

[USE0205]

80. All plant and equipment installed or used in or on the premises: -

(a) Must be maintained in a proper and efficient condition, and

(b) Must be operated in a proper and efficient manner.

In this condition, "plant and equipment" includes drainage systems, infrastructure, pollution control equipment and fuel burning equipment.

[USE0315]

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

[USE0965]

82. A sharps container shall be provided for the storage of used disposable needles in any skin penetration process. The sharps container shall be collected by an authorised medical waste collection service to the satisfaction of Council's General Manager or his delegate.

[USE1025]

GENERAL TERMS OF APPROVAL UNDER PART 5 OF THE WATER ACT 1912

General Conditions

The purposes of these conditions are to -

- define certain terms used in other conditions

- specify the need to obtain a license, permit or authority before commencing any works
- specify that, in most cases an approval will only be issued to the occupier of the lands where the works are to be located (as required by the Water Act)
- require existing approvals to be cancelled or let lapse when a license is issued (if applicable)
- require the safe construction and operation of all works
- require the use of appropriate soil conservation measures
- limit vegetation destruction or removal to the minimum necessary
- require the separate authorisation of clearing under the NVC Act
- allow conditions to be imposed for management of fuel (petroleum)
- require the payment of fees on the issuing of an approval

In the following conditions relating to an approval under the Water Act 1912:

"the Department" means the Department administering the Water Act 1912;

"approval" means a license, permit, authority or approval under that Act;

"river" has the same meaning as in Section 5 of the Water Act 1912;

"work" means any structure, earthwork, plant or equipment authorised under the approval to be granted, as defined in Section 5 and 105 of the Water Act 1912;

"controlled work" means any earthwork, embankment or levee as defined in Section 165 of the Water Act 1912.

- Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, an approval under Part 5 of the Water Act 1912 must be obtained from the Department. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.
- An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act 1912.
- When the Department grants an approval, it may require any existing approvals held by the applicant relating to the land subject to this consent to be surrendered or to let lapse.
- All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.

- All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.
- The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.
- All vegetation clearing must be authorised under the Native Vegetation Conservation Act 1997, if applicable.
- The approval to be granted may specify any precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.
- A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.
- Any license so issued, from the date of issue, will be subject to Annual Cost Recovery Water Management Charges as set by the Independent Pricing and Regulatory Tribunal.

Conditions relating to water entitlements

The purposes of these conditions are to -

- allow rules for water transfers to be applied
- specify an annual entitlement (regulated and unregulated streams)
- allow the placement of limitations as to when water may be taken to ensure a flow remains for other users and the environment (unregulated streams)
- A transfer of an entitlement shall be subject to the provisions of the Water Act 1912 the regulations made thereunder and the transfer rules applying at the time of application as determined by the Department
- The authorised annual entitlement will not exceed **1** megalitre.
- Extraction of water under the approval to be issued shall be subject to conditions with regard to availability of supply and such restrictions as are deemed necessary by the Department from time to time to ensure an adequate flow remains for other water users and the environment.

Conditions for water use

The purposes of these conditions are to -

- allow the department obtain an accurate measure of water use where necessary
- specify the purpose(s) for which the water may be used
- specify conditions to protect water quality and the environment
- ensure proper management of tailwater drainage
- ensure accessions to groundwater systems are restricted.

- If and when required by the Department, suitable devices must be installed to accurately measure the quantity of water extracted or diverted by the works.
- All water measuring equipment must be adequately maintained. It must be tested as and when required by the Department to ensure its accuracy.
- The use of water shall be conditional on no tailwater drainage being discharged into or onto -
 - any adjoining public or crown road
 - any crown land
 - any river, creek or watercourse
 - any groundwater aquifer
 - any area of native vegetation
 - any wetlands

Conditions for Bores and Wells

See also "general conditions" and "conditions for water use"

The purpose of these conditions are to -

- set a limited time for bore construction
- allow DIPNR access for inspection and testing
- specify procedures if saline or polluted water found
- specify procedures if the bore is abandoned
- require advice if water found
- specify the volumetric allocation for each purpose of the entitlement
- identify lands that may be irrigated
- specify the volumetric allocation for the works purpose
- allow DIPNR to alter the volumetric allocation at any time
- Works for construction of bores must be completed within such period as specified by the Department.
- Within 2 months after the works are completed the Department must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are notified in the approval.
- Officers of the Department or other authorised persons must be allowed full and free access to the works for the purpose of inspection and testing.
- Water shall not be pumped from the works for any purpose other than dewatering for construction purposes.
- The use of water shall be conditional on no tailwater drainage being discharged into or onto -
 - any adjoining public or crown road
 - any crown land
 - any river, creek or watercourse
 - any groundwater aquifer
 - any area of native vegetation
 - any wetlands

- The work shall be managed in accordance with the constraints set out in the "Tweed Shire Council Minor Works Acid Sulfate Soil Management Plan" as detailed in Appendix F of the Statement of Environmental Effects produced by Darryl Anderson Consulting Pty Ltd dated January 2005.
- Dewatering shall be undertaken for a maximum period of 2 days only (Should a longer duration be required, a groundwater management plan shall be developed for water disposal)
- The licensee shall inform a DIPNR Hydrogeologist (at the Grafton office on 02 6640 2000) a minimum of 5 days prior to the commencement of dewatering.
- The volume of groundwater extracted as authorised must not exceed 1 megalitres.
- The Department has the right to vary the volumetric allocation or the rate at which the allocation is taken in order to prevent the overuse of an aquifer.
- The licence shall lapse within three (3) months of the date of issue of the licence.

REPORT:

Applicant: BCS Group Pty Ltd
Owner: BCS Group Pty Ltd
Location: Part Lot 704 DP 1000580 No. 9394 Tweed Valley Way, Chinderah
Zoning: 1(b2) Agricultural Protection
Cost: \$280,000

BACKGROUND:

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

This matter has been reported to Council on two prior occasions, the reports are attached for reference. The resolution of the latter report was to inform the Director-General of the Department of Planning of Council's intention to prepare the draft LEP. The Director General issued an authorisation to exercise delegation in respect of the public exhibition on 16 August 2006. Advertising of the draft LEP and development application was undertaken between 15 November and 15 December 2006. All of the advertising material is available on Council's file for inspection.

In response to the public exhibition of the application sixteen submissions were received and are attached to this report for reference.

NSW Department of Planning

Further to Council's resolution of 2 May 2006 and the communication of such to the Department of Planning the Director-General advised on 16 August 2006 of the dispensation of the requirement to prepare a Local Environmental Study and therefore sections 57 and 61 of the Act also.

The delegation issued by the Director-General under s 23 of the act enables Tweed Council to prepare and furnish a s 69 report on the Minister for the making of the Plan, provided the report complies with all of the provisions of s 69 and is in the prescribed format.

Section 62 Consultation Process

Prior to the certification or exhibition of the Draft Tweed Local Environmental Plan (Amendment No.83) Council, pursuant to Section 65 of the Act, consulted with all relevant external authorities, which comprised:-

- NSW Department of Primary Industries (DPI).
- NSW Roads Traffic Authority (RTA).
- NSW Department of Environment and Conservation (DEC).

Each of the departments raised matters for consideration but did not object to the making of the Plan or the development per se. The issues raised were taken into consideration and reported on in the explanatory notes to the public exhibition material. Whilst the exhibition documentation is held on Council's file the main issues may be summarised as:

- (a) the RTA raised issue with the long slow moving funeral corteges in the 110km/h zone of the adjacent Highway. As referred to in the exhibition documentation, the draft Plan amendment specifically prohibits funeral corteges to and from the property.
- (b) the RTA also raised potential noise impacts, but this appears not to have properly considered the significant setback of the buildings to the adjoining roads, the extent of vegetation buffering and for this class of building the requirement for acoustic treatment under the Building Code of Australia.
- (c) DEC raised concern of potential land-use conflicts associated with air, noise and odour. Council's Environment and Health Services Unit has assessed the proposal against the Protection of the Environment Operations Act 1997 (POEO Act) and raises no issues in this regard. The separation measures to reduce land use conflict are discussed in the report.
- (d) 117 Direction No. 14 (Farmland) identifies the land subject to the draft Plan as regionally significant farmland. The direction does not allow rezoning of land identified as "Regionally Significant Farmland" for the urban or rural residential purposes. The purpose of the amendment is to enable the land use of a crematorium and mortuary, which is prohibited development under the provisions of the Tweed LEP 2000 1(b) Agricultural Protection zone.

DPI advice suggests that the draft Plan is inconsistent with this Direction. The DPI have indicated a concern with regard to section 4 of the Direction, which requires that any inconsistent draft Plan have regard to section 5 of the EP&A Act and be consistent with Section 4 of the report titled "Northern Rivers Farmland Protection Project – Final Recommendations, February 2005". The following is provided in relation to these documents:

Section 5 – EP&A Act

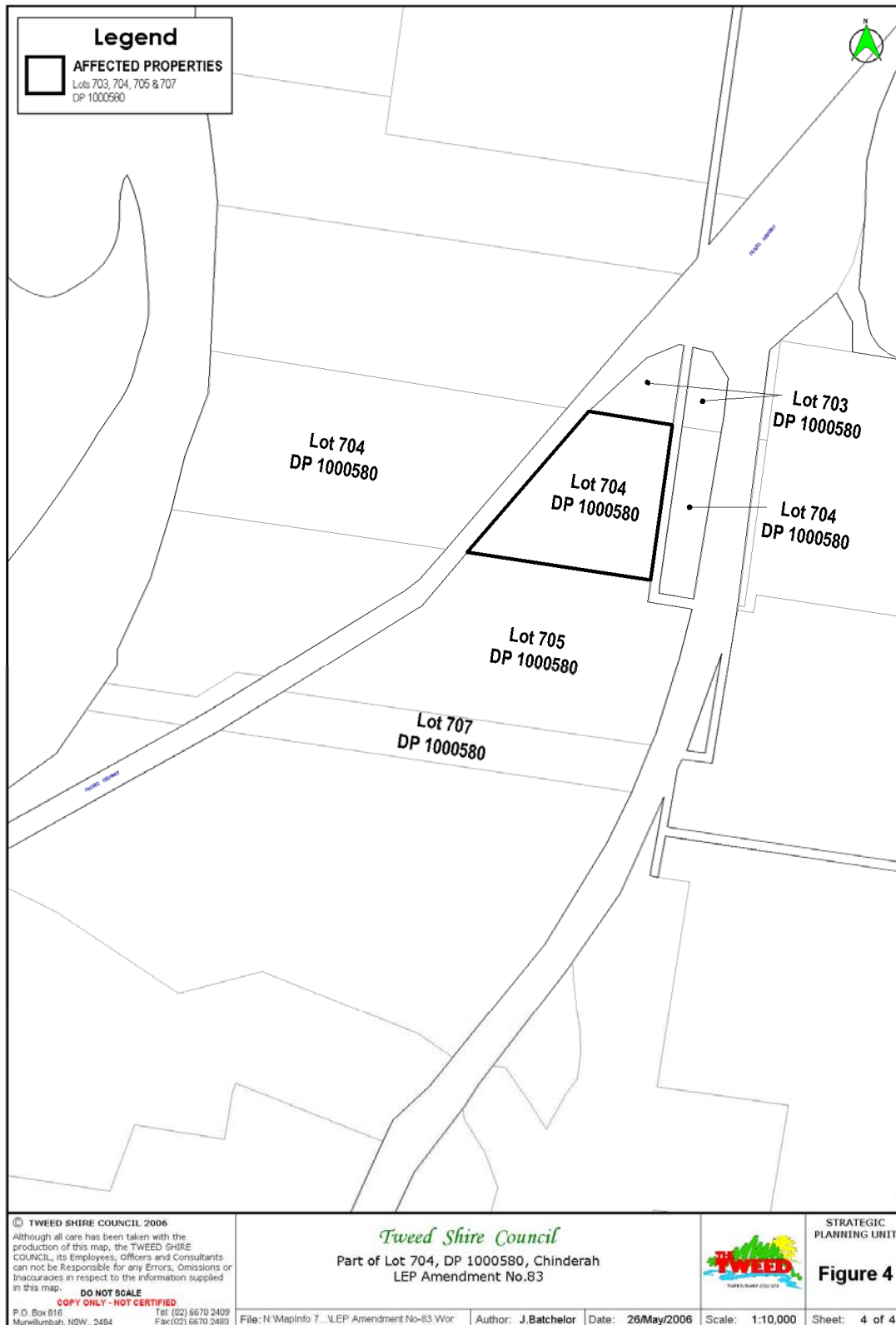
The draft Plan has regard to the "Objects" of the Act.

It is considered that the draft Plan is not inconsistent with s 5 of the Act in so far that all relevant matters of consideration have been taken into account and the development as proposed constitutes orderly and economic utilisation of the land in the context of the current pattern of land-use development.

Section 4 – Northern Rivers Farmland Protection Project – Final Recommendations, February 2005. The following is noted in respect of the draft Plan: -

- (i) Historically that part of the land subject to the draft LEP has not been utilised for "legitimate" rural uses, being agriculture, horticulture, conservation, extractive industry, forestry and the like. The site has supported an approved rural tourist facility, known as Melaleuca Station, since 27 October 1992. Since then, the land has been identified as regionally significant farmland on the Farmland Protection Maps prepared by the Agricultural Office of the NSW Department of Primary Industries, which appear to have been prepared at a broad scale rather than that based on actual site data (constraints). Consequently, the mapping is not reflective of the existing site development. If the crematorium and mortuary development was in isolation it may not have satisfied the relevant objectives however, as the proposed development is within the curtilage of an existing established tourist facility and it will not further impact on the use and operation of any adjoining agricultural land, the objectives are essentially satisfied.
- (ii) As raised above, the conservation of the land in question strictly for the purpose of agricultural use is not available due to the current land-use activities. As mentioned, the existing development was not identified in the protection mapping of the site and consequently the questions raised in respect of the conservation of the sites agricultural capability may not be warranted in this case. The mapping of adjoining land as regionally significant farmland, based on its current use and level of improvement, is likely to be an accurate reflection of the lands status, however, it should be noted that the adjoining lands are quite distinct from the subject site in this regard. The draft LEP does not undermine the objectives of the farmland protection regime, which is principally aimed at the conservation and protection of the best available agricultural land, and as the land-value has likely experienced a marked appreciation since the erection of the rural tourist facility it is unlikely that the subject site would ever revert back to strictly agricultural uses.
- (iii) The land subject of the draft LEP is fragmented by virtue of the existing approved development. The question at issue is whether approval of the crematorium will further fragment and ultimately compromise the agricultural viability of the land. Containing the crematorium and mortuary within the curtilage of the existing development will allow for adequate buffering to adjoining sites consequently mitigating any additional land fragmentation and avoiding any fettering of adjoining agricultural or road activities.
- (iv) The present lot sizes have been determined by past subdivision approvals. Although the subject land is part of a broader 'farming area' the land is highly fragmented both under land title and existing site development. The proposed crematorium and mortuary, which is to be contained within the curtilage of an existing tourist facility, will not cause further fragmentation of the land by altering lot sizes.

SITE DIAGRAM:



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

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

As discussed in the earlier reports, which are attached, the present agricultural land-use zoning does not permit the proposed development, hence the requirement for the draft Plan. The draft Plan is consistent in content, procedure and purpose with all relevant EPI's.

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

The draft Plan is not inconsistent in content, procedure and purpose with any draft EPI.

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

The proposed development is not inconsistent with any development control plan.

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

The exhibition and assessment of the application have been carried out in accordance with the Act and Regulations.

(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 draft LEP will have an indirect impact due to its change to Schedule 3, that is, to permit what would otherwise be a prohibited land-use. There are no significant environmental or economic impacts in the locality from the LEP amendment. However, it may be concluded from the public submissions that there may be a degree of social (psychological) impact on some members of the community, particularly as it relates to the nature of the proposed development and the perceived distaste of the proposed development in conjunction with a tourist facility. It should also be stated that a crematorium and mortuary would have a similar impact in other locations and could have a higher degree of concern if it was proposed closer to established urban areas.

(c) Suitability of the site for the development

The public exhibition material prepared in relation to the draft Plan and proposed development considered, among other things, the suitability of site for the proposed use. A copy of the exhibition material document is attached to Council's file.

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

Advertising of the draft LEP and development application was undertaken between 15 November and 15 December 2006. Sixteen submissions were received.

Copies of the public submissions were sent, as a matter of courtesy, to the applicant on 18 and 21 December 2006 (names and addresses undisclosed). A formal request for full copies of the submissions (including the earlier omitted information) was later received and provided.

A copy of the submissions is attached for reference.

The main areas of issue may be summarised as:

1. The visibility of the development both in physical building sense and from the venting of exhaust gases, as seen from adjacent roads and elevated properties, and the psychological impacts thereto.
2. The inappropriateness of permitting competing land-uses within such a confined environment.
3. Occurrence of inappropriate signage.
4. Adverse impact on property values.
5. Inappropriate location for a crematorium.

In response, it is impossible to gauge to the psychological and social impact of permitting a crematorium in this locality, and it is acknowledged that there will be some impact, particularly in the short-term, on a small sector of the community. However, for the greater majority, particularly over-time, the presence of the crematorium will likely go unnoticed providing that signage is limited and conditions of consent are proposed that prohibit boundary signage for the crematorium and prohibit the ventilation of visible exhaust gases. In addition, Council may wish to consider placing a time limit on the use of the land for a crematorium.

In relation to the operation of the two land-uses the onus is clearly on the operator to ensure that an appropriate management regime is implemented. If it is not, it is highly likely that the demand for their services would decrease to a point where neither use would be sustainable, consequently self regulation is seen to be an appropriate measure of regulation in this instance.

The location of the crematorium is not considered to be inappropriate. As for property values there has not been any evidentiary material put forward in support of this issue and a significant impact on property values is not anticipated.

The Solicitor for the applicant has provided the following comments in relation to the submissions: -

"We enclose our clients further responses to the issues raised in the public submissions. They should be read in conjunction with the letter dated 12 January 2007 previously sent to you by Jim Glazebrook and Associates Pty Ltd.

Complaint	Response
<i>Use of the whole tourist complex and surrounding agricultural land for the mortuary and crematorium</i>	<i>The application clearly states that it will only use a very small portion of the existing land, and part of the building for the mortuary and crematorium. This use will not impact upon the area currently used for the tourist complex and the balance of the farm.</i>
<i>Present tourist patronage indicates this facility is not viable in its present form</i>	<i>The tourist facility has been operation as an ongoing viable business for 15 years. This demonstrates a failure to properly review the application, which dealt with this issue.</i>
<i>That the mortuary and crematorium will be out of context with a tourist facility and proposed development for a highway service centre</i>	<i>The application clearly states that the establishment of the mortuary and crematorium will be run harmoniously and integrated into the current tourist facility operation. The timing of the use of each part of the complex would be carefully controlled</i>
<i>Farming land will be lost for the development of the mortuary and crematorium</i>	<i>The application clearly states that no existing farming land will be lost by the approval of the mortuary and crematorium. It would appear that the person making the submission failed to read the application and supporting documents</i>
<i>The approval of the application would ruin the view of people owning property in Terranora and Banora Point</i>	<i>The addition to the existing building will be almost invisible from Terranora and Banora Point, which are between three and five kilometres to the North West</i>

<i>The smell and exhaust from the cremator will have an adverse impact upon surrounding properties</i>	<i>The application contains detailed information on the cremator, which shows that it meets the most stringent environmental design and operating criteria. Because of the nature of its design, it has a clean exhaust, free of smoke and odour</i>
<i>The development would have a negative impact on many residents</i>	<i>A review of the complaints reveals that no person directly adjacent to the proposed development or within a 3km radius has lodged an objection</i>
<i>The area is flood prone</i>	<i>The application proposes that the development will be constructed above the one in 100 year flood level</i>
<i>The approval of the application would devalue properties in Tumbulgum</i>	<i>Tumbulgum is over 5km from the proposed development, and a complaint such as this is simply unsustainable</i>
<i>The site is not suitable for the use</i>	<i>It is not possible to reconcile this complaint with the application or the correspondence sent by Council to the applicant prior to the applicant purchasing the property"</i>

These comments are generally concurred with.

(e) Public interest

It is accepted that there will be varying degrees of impact on a small sector of the community however the broader community is not likely to be significantly impacted as a result of the proposal. The impact on the public interest therefore is not seen to be of a magnitude that warrants the refusal of the proposal.

OPTIONS:

1. Resolve in accordance with the recommendation to this report.
2. Resolve to cease the making of the draft Plan on the basis that the intensification of the agriculturally zoned land for non-agricultural activities is inconsistent with the character and present land-uses in the locality.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Having regard to the matters addressed in this report, previous reports and the public exhibition documentation the development is recommended for approval subject to conditions to ensure there is a distinct separation of the development from the existing tourist operation, a restriction on signage and stringent environmental conditions in relation to the operation of the crematorium. A crematorium and mortuary is not a desirable use in urban areas and a rural location remote from residential development is preferable. The grounds and garden setting of the site area is of a high standard and the location is central to the more populated areas of the Shire.

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 of 12 April 2006 (DW 1372310)
 2. Council Report of 2 May 2006 (DW 1381375)
 3. Copies of Public Submissions (DW 1537185)
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