



AGENDA

PLANNING COMMITTEE MEETING

Tuesday 4 December 2007

Chairman: Mr Max Boyd AM

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



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ITEMS FOR CONSIDERATION OF THE COMMITTEE:

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REPORTS THROUGH GENERAL MANAGER

REPORTS FROM DIRECTOR PLANNING & REGULATION

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

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

MATTERS FOR CONSIDERATION

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



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P1 [PR-PC] Section 96 Application DA07/0274.04 for an Amendment to Development Consent DA07/0274 for Alterations & Additions to Dwelling & 1.8m High Front Fence at Lot 104 DP 246488, No. 16 Compass Way, Tweed Heads

ORIGIN:

Building & Environmental Health

FILE NO: DA07/0274 Pt1

SUMMARY OF REPORT:

A Section 96 application to modify Development Consent DA07/0274 has been lodged with Council seeking the deletion of condition number 5 of the consent. The subject condition reads as follows; *The floor level of the proposed master bedroom is to achieve Council's minimum floor level requirement of 3.1 metres Australian Height Datum to ensure compliance with Council's Tweed Consolidated DCP Section A3.*

The original application was referred to Council on Tuesday, 11 September 2007, as the owners were seeking a variation to Council's policy for minor additions in flood prone areas. The variation sought was the approval to construct major dwelling additions (approximately 70m²) at the same level as the existing dwelling which is below Council's minimum required floor level of 3.1 metres Australian Height Datum.

The original application was recommended for approval subject to the requirements of condition number 5 being placed on the consent, which was consistent with the recommendation from Council's Infrastructure Engineer. The above recommendation was endorsed at the Council meeting on 11 September 2007.

The owners have since submitted a Section 96 application to amend the consent to have the new dwelling additions constructed from water resistant materials and at the same level as the existing dwelling in lieu of raising the floor level of the master bedroom as required by condition number 5 of the consent.

RECOMMENDATION:

That Section 96 Application DA07/0274.04 for an amendment to Development Consent DA07/0274 for alterations & additions to dwelling & 1.8m high front fence at Lot 104 DP 246488, No. 16 Compass Way, Tweed Heads be refused for the following reasons: -

- 1. The proposed development is not consistent with Council's policy for minor dwelling additions in flood prone areas.**
- 2. Approval of such a development would create an undesirable precedent.**



REPORT:

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

BACKGROUND:

A Section 96 application to modify Development Consent DA07/0274 has been lodged with Council seeking the deletion of the requirements of condition number 5 of the consent, subject to water resistant materials being used for the dwelling extensions.

The original application was referred to Council on Tuesday, 11 September 2007, as the owners were seeking a variation to Council's policy for minor additions in flood prone areas as part of the proposal.

The original application proposed to enclose the existing rear terrace to enlarge the kitchen, living and dining area (27m²), enlarge bedroom 3 to allow for an ensuite (8m²), construct a new master bedroom with walk-in-robe at the rear of house (35m²), and carry out minor alterations to the internal floor layout, all of which were proposed below Council's required minimum floor level of 3.10m AHD. In total the dwelling additions consisted of approximately 70m², which was roughly 29 percent of the existing floor area.

Comments received from Council's Infrastructure Engineer suggested that in order to carry out the extensions in accordance with the policy, a split level design could be incorporated which involved raising the floor level of the master bedroom 400mm in height to achieve the required minimum floor level. This suggestion was forwarded on to the property owners who advised that such a proposal undesirable for the following reasons;

- The proposed renovation will have no detrimental effect on flooding in the locality.
- Raising the floor level of the master bedroom to comply with the new required 1 in 100 year flood level would make no difference to potential damage from any major flooding as the remainder of the dwelling is below the 1 in 100 year flood level.
- By raising the master bedroom floor 400mm, the ability to work with existing roof lines regarding hips and valleys and ceiling levels will be greatly effected. Furthermore, the 2 roofs will not marry together and we will be subjected to extra construction costs for an undesirable finish.
- Whilst the existing finished floor level of RL 2.695 is below the required minimum finished floor level of 3.10m AHD, the existing level is still above the predicted 1 in 100 year flood level of 2.60m AHD, hence inundation in a 1 in 100 year flood event is unlikely.

- A split level design would create safety issues, in particular trip hazards, with relation to the master bedroom and accessing the dining/family room area as per the plan.
- My husband has ongoing knee problems and will be having knee surgery later this year.
- A split level design would impact on the functionality of the adjacent outdoor areas and is aesthetically undesirable.
- A split level design would be undesirable for wheelchair access of family and friends.

The application was submitted to the Council meeting on Tuesday 11 September 2007, and as per the recommendation from Council's Infrastructure Engineer, it was resolved the application be approved subject to the floor level of the proposed master bedroom achieving Council's minimum floor level requirement of 3.1 metres Australian Height Datum. This recommendation was to ensure compliance with Council's Tweed Consolidated DCP Section A3.


As the owners were dissatisfied with the decision from the Council meeting, they verbally asked Council if they would reconsider their decision regarding the raising of the floor level in the master bedroom if they were to use water resistant materials during the construction. According to both the owners and the Director of Planning, after the decision had been made, the owners were advised by Council that they could lodge a Section 96 application to apply to modify the consent, and that Council would investigate their proposal and consider the application on its merits.

As such the owners have now lodged a Section 96 application proposing that the master bedroom and ensuite be constructed using water resistant materials and that the floor level of the bedroom be at the same level as the existing dwelling.

The application has since been referred to Council's Infrastructure Engineer to provide comments on the amended proposal. In considering the matter, Council's Infrastructure Engineer has advised that the proposed amendment should not be supported and that the original conditions should remain to ensure that Council's existing floodplain management strategy is adhered and an undesirable precedent is not created.

SITE DIAGRAM:



<p>TWEED SHIRE COUNCIL 2007 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 016 Murwillumbah, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i> Lot 104 DP 246488 No. 16 Compass Way, Tweed Heads</p>		<p>PLANNING REFORMS UNIT Site Plan</p>
<p>File: N:\Munsys\A4P - SITE PLAN.Wor Author: B. Ingram Date: 29/Aug/2007</p>		<p>Scale: 1:10,000</p>	<p>Sheet: 1 of 1</p>

CONSIDERATIONS UNDER SECTION 79C & 96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**(a) (i) The provisions of any environmental planning instrument**Tweed Local Environmental Plan 2000

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

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

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

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

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

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

North Coast Regional Environmental Plan 1988State Environmental Planning Policies

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

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

There are no Draft Environmental Planning Instruments applicable to this application

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

Development Control Plan Part A3 - Development of Flood Liable Land

In respect of DCP 5, the site is identified as being in a flood prone area. The 1 in 100 year flood level is 2.60 m AHD with a required floor level of 3.1m AHD (as per latest amendments in March 2006). This application proposes the enclosure of the existing rear terrace to enlarge the kitchen, living and dining area (27m²), enlarging bedroom 3 to allow for an ensuite (8 m²), constructing a new master bedroom with walk-in-robe at rear of house (35m²), and minor alterations to the internal floor layout, all of which are to be at the same floor level as that of the existing dwelling house. This additional habitable floor area totals approximately 70 m² and 29% of the original floor area. As part of this Section 96 application, the owners have also proposed to construct the dwelling additions from water resistant materials in order to minimise the potential damage to the dwelling in the event of a flood.

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

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

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

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

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

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

(c) Suitability of the site for the development

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

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

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

(e) Public interest

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

OPTIONS:

1. Approve the Section 96 application as submitted to allow the proposed dwelling additions to be constructed at the same level as the existing dwelling which is below the minimum required floor level of 3.10 metres AHD, subject to water resistant materials being used as nominated.
2. Refuse the Section 96 application, leaving the applicant with the existing approval by which the floor level of the proposed master bedroom is required to achieve Council's minimum floor level of 3.1 metres AHD.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council has a long standing policy of permitting 'minor' extensions to dwellings with existing floor levels below the adopted habitable floor level, provided they do not exceed 15% of the floor area or 30m², whichever is lesser. The objective of this policy is to minimise exposure to property damage from flooding, which is supported by State



Government Policy. It is considered that to vary these requirements would potentially expose Council to liability and would introduce undesirable precedents.

POLICY IMPLICATIONS:

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

CONCLUSION:

The proposed Section 96 application is seeking a variation to Council's policy for minor additions in flood prone areas, and as such may set a precedent in the given area and throughout the Shire for other similar developments below the 1 in 100 year flood level. Given the above, it is considered that such a decision should be made by Council to either allow the dwelling additions to be constructed at the same level as the existing dwelling subject to water resistant materials being used, or alternatively require that the original conditions of consent be enforced as per the recommendation from Council's Infrastructure Engineer.

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.

P2 [PR-PC] Section 96 Application DA05/0308.16 for an Amendment to Development Consent DA05/0308 for a Staged Residential Subdivision (3 Stages) Comprising 89 Single Dwelling Lots, 7 Duplex Blocks, 1 Drainage Reserve, 1 Residue Lot & 2 Public Reserves at Lot 13 DP 793985; Lot B DP 368706; Lot 1 DP 392245, Barnby Street, Murwillumbah

ORIGIN:

Development Assessment

FILE NO: DA05/0308 Pt10

SUMMARY OF REPORT:

At the Council Meeting held on 17 July 2006 the Administrators resolved to issue a deferred development consent for the proposed subdivision. In December 2006 a S96 Amendment was subsequently approved to enable an effective construction period.

The applicant is again requesting that Council amend certain conditions of the consent to defer major infrastructure to later stages of the development and avoid construction of the Joshua Street road link.

As there can be no guarantee when and if Stage 2 will be constructed, all major infrastructure cannot be indefinitely deferred and must be provided with Stage 1. The recommendation is therefore to approve a modified version of the applicant's submission and to refuse the amendments which seek to defer the major infrastructure required for this development.

RECOMMENDATION:

That Section 96 Application DA05/0308.16 for an amendment to Development Consent DA05/0308 for a staged residential subdivision (3 stages) comprising 89 single dwelling lots, 7 duplex blocks, 1 drainage reserve, 1 residue lot & 2 public reserves at Lot 13 DP 793985; Lot B DP 368706; Lot 1 DP 392245, Barnby Street, Murwillumbah be approved subject to the following amendments to DA05/0308: -

Delete Condition 1A and replace with 1B as follows which changes the first dot point to replace with latest staging plan

1B. The development shall be completed in accordance with the Statement of Environmental Effects and the following Plan Nos: -

- **Drawing 20399 (G) prepared by Brown & Haan Surveying dated 3.8.2007 – amended to indicate Lots 234 and 235 to be included in Stage 1, and to reference the western end of Rous River Way as**

“TRCP link road – to be dedicated to Council as part of Stage 1” only”;

- Drawing Number 7214/6/1 DA Figure 4 Revision E prepared by Cardno MBK and dated May 2006;
- Drawing Number 7214/06/1 DA Figure 10 Revision B prepared by Cardno MBK and dated August 2004;
- Drawing Number 7214/06 DA Figure 13 Revision B prepared by Cardno MBK and dated January 2005;
- Drawing Number 7214/06 DA Figure 14 Revision A prepared by Cardno MBK and dated November 2003;
- Drawing Number 7214/06/01 DA Figure 17 Revision B prepared by Cardno MBK and dated January 2005;
- Drawing Number 7214/06 DA Figure 18 Revision B prepared by Cardno MBK and dated August 2004;

except where varied by the conditions of this consent.

[GEN0005]

Delete Condition 22A and replace with 22B as follows:

22B. Prior to the issue of a Subdivision Certificate for Stage 1, the road connection to Joshua Street must be completed. This includes the dedication of the required road reserve at no cost to Council.

This section of road is included in Council’s “Tweed Road Contribution Plan” (TRCP) as Item 12n.

Should the applicant wish to construct this section of road prior to Council undertaking the work, the applicant may apply for a credit of the applicable construction costs against the relevant TRCP component of the Section 94 contributions. The maximum value of the credit available is as per the Works Schedule of the TRCP. If the value of the credits exceed the value of the TRCP contribution payable for this development as specified in Condition 106A of this consent, then the applicant can request a carry over credit (on the TRCP component of the Sec.94 charges) to another development within the same TRCP sector of Tweed Shire. The credit granted will be determined by Council based on a detailed cost schedule provided by the developer and other costing data held by Council.

Note that the Sec.94 credit only applies if the road is built to its final form, and detailed design plans must be submitted to and approved by Council prior to construction commencing.

The applicant may seek to construct and dedicate this section of road as a temporary road, but separate approval of Council will be required, and this may affect the value of any TRCP credit, and will affect the timing of the availability of any credit granted.

Such a proposal could be accepted as a temporary measure - only until further development and/or a rezoning proposal is submitted over the residual portion of the site. The design of this road must cater for its use as a bus route, make provision for a cycleway, and provide traffic calming measures to ensure traffic speeds reflect the 50 kph speed limit.”

Delete Condition 24 and replace with Condition 24A as follows:

24A Prior to the issue of a Subdivision Certificate for Stage 1, the applicant is required to establish a dedicated road link from Joshua Street to the Stage 1 lots. This will require construction of the TRCP road link to Joshua Street (as nominated elsewhere in this consent), full road construction of Road 2 fronting the reserves (as nominated elsewhere in this consent), as well as construction of relevant sections of Road 1 and/or Road 3.

Delete Condition 25A

Delete Condition 28 and replace with Condition 28A as follows:

28A. Road 2 (Rous River Way) shall be fully constructed to urban road standards and dedicated accordingly, for the full frontage of the Drainage Reserve, both Public Reserves and the sewer pump station, as part of the Stage 1 works.

Delete Condition 29

Delete Condition 30A and replace with Condition 30B as follows:

30B. The section of Road 3 between Road 2 and Lot 217, when constructed, shall be built to full urban standards and dedicated as public road.

Delete Condition 31 and replace with Condition 31B as follows:

31B. The Stage 2 construction of Road 5 is to terminate at the northern boundary of Lot 228, and will require the provision of a temporary sealed turning bulb area, covered by a Right-of-Carriageway.

Delete Condition 33 and replace with Condition 33A as follows:

33A. Lot 235 (public reserve) shall be filled to a minimum of RL 4.1m AHD, and constructed as part of the Stage 1 works.

Delete Condition 42 and replace with Condition 42A as follows:

42A. The developer shall embellish the public reserve (Lot 235) and drainage reserve according to the approved landscaping plan. The public reserve shall be filled and levelled with a suitably established grass cover. Further embellishment of the public reserve shall not occur until 30% of

the allotments have been occupied. Alternatively, the developer may pay the appropriate financial contribution and Council will undertake the further embellishment works at the appropriate time.

Delete Condition 44 and replace with Condition 44A as follows:

44A. Public Reserves, the sewer pump station site and Drainage Reserve shall be constructed and dedicated as part of the Stage 1 works.

Delete Condition 49

Delete Condition 49A and replace with Condition 49B as follows:

49B. Prior to issue of a Construction Certificate the applicant is to provide evidence to Council that Lot 115 can achieve a 20m Inner Protection Area while still accommodating a dual occupancy. Failure to satisfy this condition will result in Lot 115 not being a nominated dual occupancy allotment.

[PCCNS02]

Delete Condition 105A and replace with Condition 105B as follows:

105BA 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 Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision 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:

STAGE 1 (41 RESIDENTIAL LOTS)

Water DSP2:	37.4 ET @ \$9997	\$373,888
Sewer Murwillumbah:	38 ET @ \$4804	\$182,552

STAGE 2 (33 RESIDENTIAL LOTS)

Water DSP2:	33 ET @ \$9997	\$329,901
Sewer Murwillumbah:	33 ET @ \$4804	\$158,532

STAGE 3 (22 RESIDENTIAL LOTS)

Water DSP2:	22 ET @ \$9997	\$219,934
Sewer Murwillumbah:	22 ET @ \$4804	\$105,688

These charges are valid for the date of issue of S96 DA05/0308.16 only 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]

Delete Condition 106A and replace with Condition 106B as follows:

106B. Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

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

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

These charges are valid for the date of issue of S96 DA05/0308.16 only and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of 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.

STAGE 1

(a) Tweed Road Contribution Plan:	\$261,820
S94 Plan No. 4 (Version 4.0)	
Sector9_4	
(b) Open Space (Structured):	\$29,640
S94 Plan No. 5	
(c) Street Trees:	\$11,286.00
S94 Plan No. 6	
(d) Shirewide Library Facilities:	\$26,144
S94 Plan No. 11	
(e) Bus Shelters:	\$988



S94 Plan No. 12	
(f) Eviron Cemetery/Crematorium Facilities:	\$4,978
S94 Plan No. 13	
(g) Emergency Facilities (Surf Lifesaving)	\$7,600
S94 Plan No. 16	
(h) Extensions to Council Administration Offices & Technical Support Facilities	\$75,878.40
S94 Plan No. 18	
(i) Cycleways	\$13,376
S94 Plan No. 22	
(j) Regional Open Space (Structured)	\$88,426
S94 Plan No. 26	
(k) Regional Open Space (Casual)	\$32,490
S94 Plan No. 26	

STAGE 2

(a) Tweed Road Contribution Plan:	\$227,370
S94 Plan No. 4 (Version 4.0)	
Sector9_4	
(b) Open Space (Structured):	\$25,740
S94 Plan No. 5	
(c) Street Trees:	\$9,801.00
S94 Plan No. 6	
(d) Shirewide Library Facilities:	\$22,704
S94 Plan No. 11	
(e) Bus Shelters:	\$858
S94 Plan No. 12	
(f) Eviron Cemetery/Crematorium Facilities:	\$4,323
S94 Plan No. 13	
(g) Emergency Facilities (Surf Lifesaving)	\$6,600
S94 Plan No. 16	

(h)	Extensions to Council Administration Offices & Technical Support Facilities	\$65,894.40
	S94 Plan No. 18	
(i)	Cycleways	\$11,616
	S94 Plan No. 22	
(j)	Regional Open Space (Structured)	\$76,791
	S94 Plan No. 26	
(k)	Regional Open Space (Casual)	\$28,215
	S94 Plan No. 26	
 <u>STAGE 3</u>		
(a)	Tweed Road Contribution Plan:	\$151,580
	S94 Plan No. 4 (Version 4.0)	
	Sector9_4	
(b)	Open Space (Structured):	\$17,160
	S94 Plan No. 5	
(c)	Street Trees:	\$6,534.00
	S94 Plan No. 6	
(d)	Shirewide Library Facilities:	\$15,136
	S94 Plan No. 11	
(e)	Bus Shelters:	\$572
	S94 Plan No. 12	
(f)	Eviron Cemetery/Crematorium Facilities:	\$2,882
	S94 Plan No. 13	
(g)	Emergency Facilities (Surf Lifesaving)	\$4,400
	S94 Plan No. 16	
(h)	Extensions to Council Administration Offices & Technical Support Facilities	\$43,929.60
	S94 Plan No. 18	
(i)	Cycleways	\$7,744
	S94 Plan No. 22	

(j) Regional Open Space (Structured) S94 Plan No. 26	\$51,194
(k) Regional Open Space (Casual) S94 Plan No. 26	\$18,810

[PCC0215/PSC0175]

Delete Condition 108 and replace with Condition 108A as follows:

108A. Pursuant to the provisions of S94 Plan No.5 proposed lot 235 shall be dedicated as passive open space and suitably embellished at no cost to Council in accordance with the approved landscaping plan.

Where a developer pays Council to complete the embellishment, Council will NOT install the equipment until a minimum of 30% of all lots in the development are occupied. Suitable embellishment shall be completed prior to the issue of a Subdivision Certificate.

[PSC0195]

Delete RFS Condition No. 3 and replace with RFS Condition 3A as follows:

3A. Where achievable there shall be a minimum of 20 metres from future dwellings on Lots 112-119 (previously shown on plan as 115-122) to the reserve to the south west which shall be maintained as an Inner Protection Area (IPA) as outlined within Section 4.2.2(b) in Planning for Bushfire Protection 2001. If it is demonstrated that 20 metres is not achievable within the property boundaries, the RFS will consider the provision of a 15 metre IPA and a 1.8 metre high radiant heat shield. These lots shall not be duplex blocks unless the minimum 20 metres IPA can be provided. This is in recognition of the current management of the reserve and the limited extent of vegetation within the reserve.

REPORT:

Applicant: Metricon (Qld) Pty Ltd
Owner: Barnby Developments Pty Ltd
Location: Lot 13 DP 793985; Lot B DP 368706; Lot 1 DP 392245, Barnby Street, Murwillumbah
Zoning: 2(c) Urban Expansion
Cost: Nil

BACKGROUND:

Council issued deferred development consent for the proposed subdivision at Barnby Street, Murwillumbah on 17 July 2006.

In December 2006 the applicant sought approval for a S96 amendment essentially amending certain conditions to facilitate an efficient construction period. Whilst most of the proposed changes were supported there were some conditions that were not considered necessary or appropriate and therefore they were not recommended for amendment or deletion. Accordingly, the S96 application was conditionally approved.

The applicant has now sought a second S96 approval that seeks amendments relating to deferring major infrastructure to later stages of the development. This application also seeks to avoid construction of the Joshua Street road link. These proposed changes would necessitate the amendment to the following conditions of consent:

1A. The development shall be completed in accordance with the Statement of Environmental Effects and the following Plan Nos: -

- Drawing Number 7214/6/1 DA Figure 3 Revision H prepared by Cardno MBK and dated 19 September 2006;
- Drawing Number 7214/6/1 DA Figure 4 Revision E prepared by Cardno MBK and dated May 2006;
- Drawing Number 7214/06/1 DA Figure 10 Revision B prepared by Cardno MBK and dated August 2004;
- Drawing Number 7214/06 DA Figure 13 Revision B prepared by Cardno MBK and dated January 2005;
- Drawing Number 7214/06 DA Figure 14 Revision A prepared by Cardno MBK and dated November 2003;
- Drawing Number 7214/06/01 DA Figure 17 Revision B prepared by Cardno MBK and dated January 2005;
- Drawing Number 7214/06 DA Figure 18 Revision B prepared by Cardno MBK and dated August 2004;

except where varied by the conditions of this consent.

[GEN0005]

22A. Construction of the connection road linking Joshua Street to Road 2, as part of the Stage 1 works. The proposal to construct this link to a rural road standard in

accordance with the requirements of DCP16, and to have this section of road created as a dedicated temporary road, is acceptable as a temporary measure (until further development and/or a rezoning occurs over the residual portion of the site), however this is a permanent link and is required for immediate and permanent use by the public. This section of road must be designed to cater use as a bus route, make provision for a cycleway, and must also provide traffic control devices to ensure traffic speeds reflect the 50 kph speed limit.

[PCCNS01]

24. The proposed road link from Joshua Street to proposed Road No.2 shall be realigned to minimise impact on existing agricultural land. The proposed road shall link into the intersection of Joshua Street and Kendon Avenue. The intersection shall be upgraded with the provision of a roundabout and separated junction to service Joshua Street and the proposed road link.

25A. A bus route through the site shall be established as part of the Stage 1 works. The engineering plans will need to demonstrate that buses can negotiate all relevant intersections along the designated bus route”

[PCCNS01]

30A. The section of Road 3 shown as Temporary Public Road shall be fully constructed to urban road standards and dedicated as public road, up to the intersection with Road 2, as part of the Stage 3 works.

[PCCNS01]

31. The Stage 3 construction of Road 5 will require the provision of a temporary sealed turning bulb area, covered by a Right-of-Carriageway.

[PCCNS01]

44. The Public Reserve and Drainage Reserve shall be dedicated as part of the Stage 1 works.

[PCCNS01]

105A. 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 Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision 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:

Stage 1

Water DSP2:	25.4 ET @ \$4598	\$116,789.20
Sewer Murwillumbah:	26 ET @ \$2863	\$74,438.00

Stage 2

Water DSP2:	36 ET @ \$4598	\$165,528.00
Sewer Murwillumbah:	36 ET @ \$2863	\$103,068.00

Stage 3

Water DSP2:	31 ET @ \$4598	\$142,538.00
Sewer Murwillumbah:	31 ET @ \$2863	\$88,753.00

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]

106A. Section 94 Contributions

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

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

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

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

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

Stage 1

a. Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) Sector9_4	\$56,145
b. Open Space (Structured): S94 Plan No. 5	\$20,280
c. Street Trees: S94 Plan No. 6	\$7,722.00
d. Shirewide Library Facilities: S94 Plan No. 11	\$17,888



e.	Bus Shelters: S94 Plan No. 12	\$676
f.	Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$3,406
g.	Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$5,200
h.	Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$32,988.80
i.	Cycleways S94 Plan No. 22	\$9,152
j.	Regional Open Space (Structured) S94 Plan No. 26	\$60,502
k.	Regional Open Space (Casual) S94 Plan No. 26	\$22,230

Stage 2

a.	Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) Sector9_4	\$69,697
b.	Open Space (Structured): S94 Plan No. 5	\$28,080
c.	Street Trees: S94 Plan No. 6	\$10,692.00
d.	Shirewide Library Facilities: S94 Plan No. 11	\$24,768
e.	Bus Shelters: S94 Plan No. 12	\$936
f.	Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$4,716
g.	Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$7,200
h.	Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$45,676.80
i.	Cycleways S94 Plan No. 22	\$12,672
j.	Regional Open Space (Structured) S94 Plan No. 26	\$83,772

- | | | |
|----|---|----------|
| k. | Regional Open Space (Casual)
S94 Plan No. 26 | \$30,780 |
|----|---|----------|

Stage 3

- | | | |
|----|---|-------------|
| a. | Tweed Road Contribution Plan:
S94 Plan No. 4 (Version 4.0)
Sector9_4 | \$60,017 |
| b. | Open Space (Structured):
S94 Plan No. 5 | \$24,180 |
| c. | Street Trees:
S94 Plan No. 6 | \$9,207.00 |
| d. | Shirewide Library Facilities:
S94 Plan No. 11 | \$21,328 |
| e. | Bus Shelters:
S94 Plan No. 12 | \$806 |
| f. | Eviron Cemetery/Crematorium Facilities:
S94 Plan No. 13 | \$4,061 |
| g. | Emergency Facilities (Surf Lifesaving)
S94 Plan No. 16 | \$6,200 |
| h. | Extensions to Council Administration Offices
& Technical Support Facilities
S94 Plan No. 18 | \$39,332.80 |
| i. | Cycleways
S94 Plan No. 22 | \$10,912 |
| j. | Regional Open Space (Structured)
S94 Plan No. 26 | \$72,137 |
| k. | Regional Open Space (Casual)
S94 Plan No. 26 | \$26,505 |

[PCC0215/PSC0175]

RFS Condition 3.

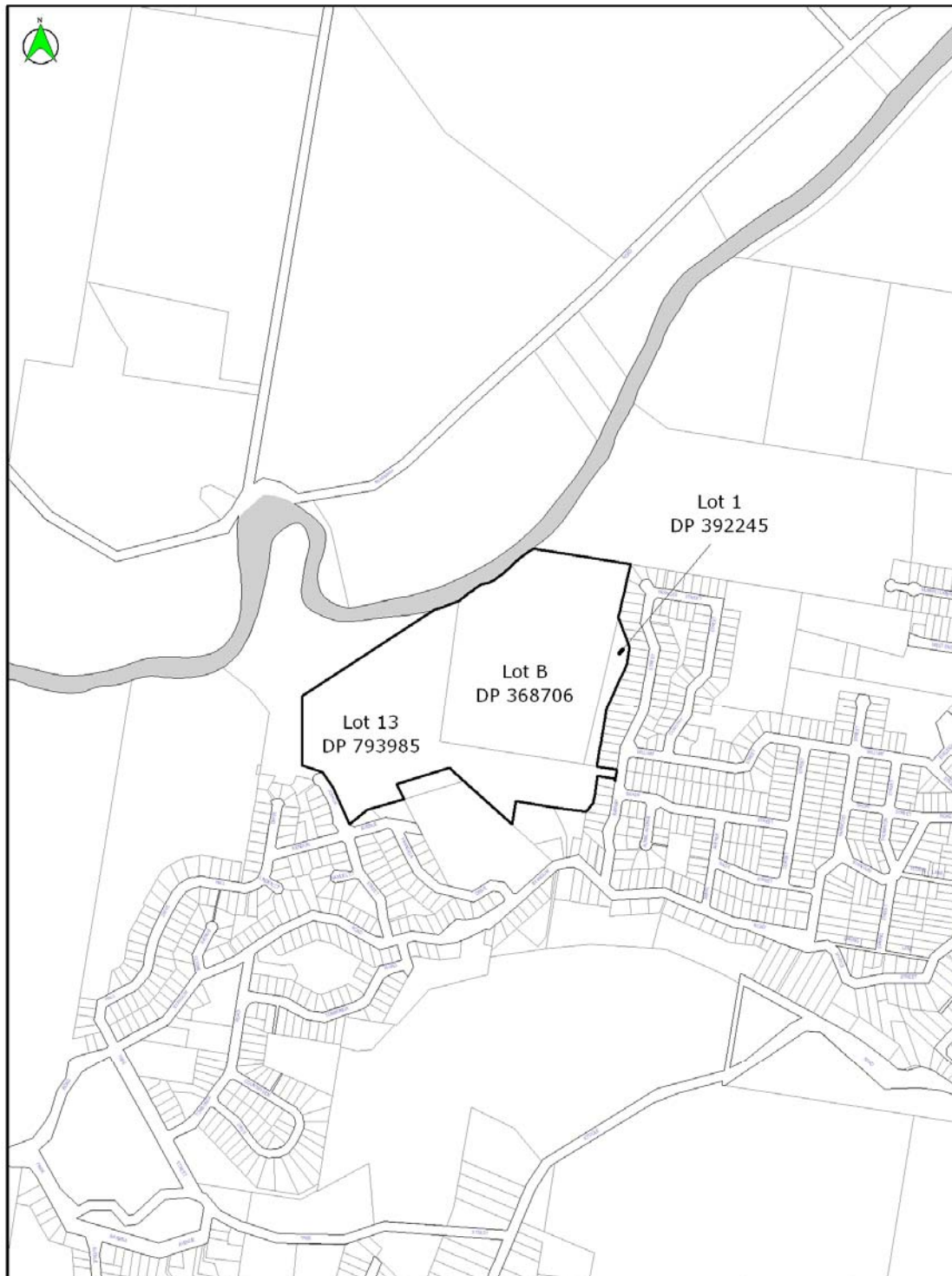
3. Where achievable there shall be a minimum of 20 metres from future dwellings on Lots 115-122 to the reserve to the south west which shall be maintained as an Inner Protection Area (IPA) as outlined within Section 4.2.2(b) in Planning for Bushfire Protection 2001. If it is demonstrated that 20 metres is not achievable within the property boundaries, the RFS will consider the provision of a 15 metre IPA and a 1.8 metre high radiant heat shield. These lots shall not be duplex blocks unless the minimum 20 metres IPA can be provided. This is in recognition of the current management of the reserve and the limited extent of vegetation within the reserve.

The assessment of each one of these proposed condition amendments are detailed in the following report.



As there can be no guarantee when and if Stage 2 will be constructed, all major infrastructure cannot be indefinitely deferred and must be provided with Stage 1. The recommendation is therefore to approve a modified version of the applicant's submission.

SITE DIAGRAM:



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 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map.

DO NOT SCALE
COPY ONLY - NOT CERTIFIED
 P.O. Box 816 Tel (02) 6670 2409
 Murwillumbah, NSW, 2484 Fax (02) 6670 2489

Tweed Shire Council
 Lot 1 DP 392245, Lot B DP 368706, Lot 13 DP 793985
 Barnby Street, Murwillumbah

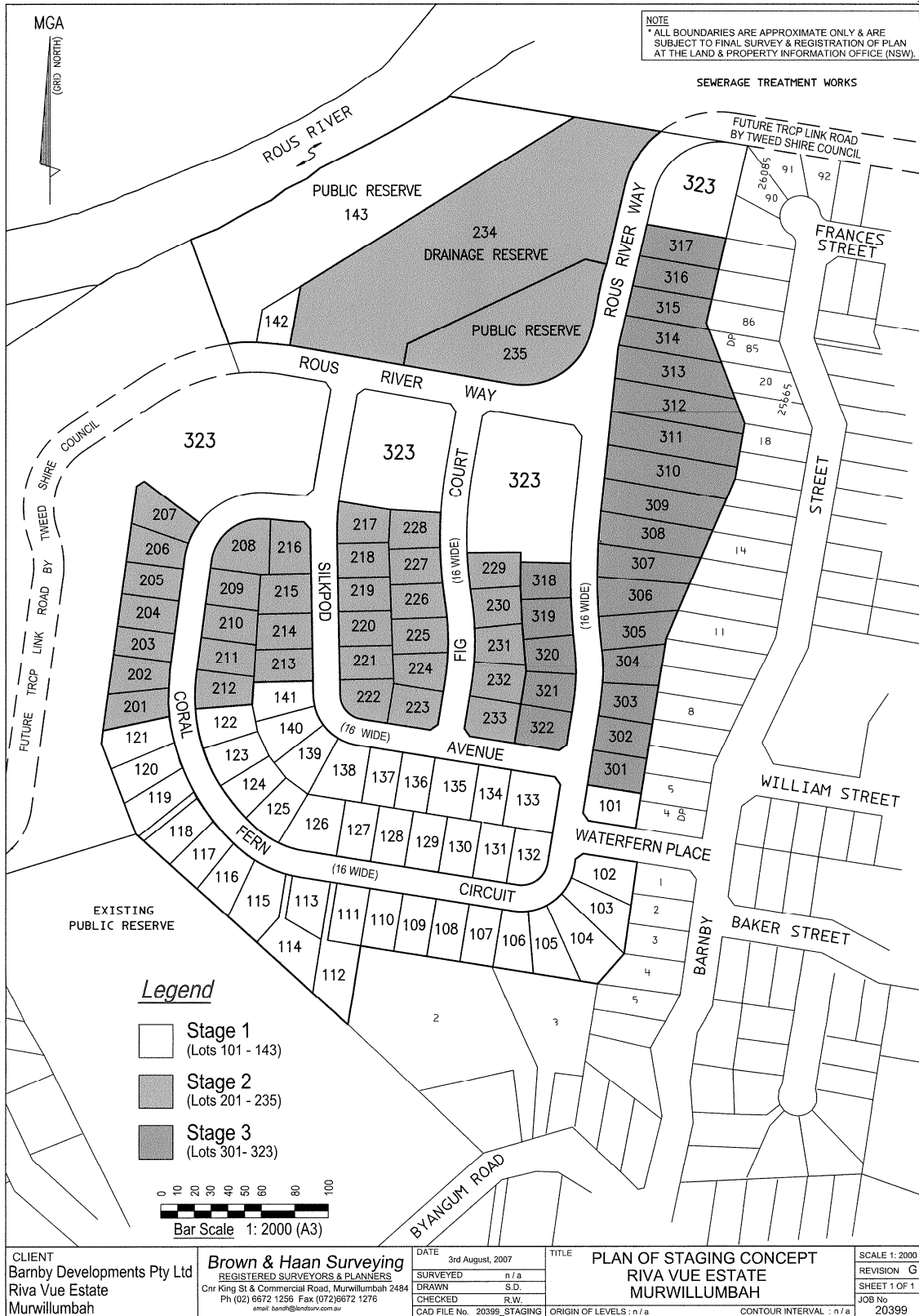


STRATEGIC
 PLANNING UNIT
**Site
 Plan**

File: N:\MapInfo 7...V4P Site Plan.Wor Author: C.Davis Date: 6/Dec/2005 Scale: 1:10,000 Sheet: 1 of 1



PROPOSED S96 PLAN OF DEVELOPMENT:



CONSIDERATIONS UNDER SECTION 79C & 96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

S96(1A) of the Act specifies that on application being made by the applicant a consent authority can modify the development consent only if it is satisfied that the proposed modified development is of minimal environmental impact and is substantially the same as the approved development and that all relevant consultations and submissions have been undertaken.

Having regard for this criteria the applicant has provided that the proposed variations result in substantially the same development on the basis that:

- *The proposed modifications essentially relate to administrative convenience, clarity, and practical implementation. They do not create issues of new or more intense environmental impacts than those already considered and consented to;*
- *The nature of the proposed modifications are such that the key elements of the design, layout and diversity of the subdivision as approved remain unaltered.*
- *The previous Section 96 modification (issued 21 December 2006) itself did not alter the essential elements of the approved subdivision and, as in this case, dealt with matters related to administrative convenience and practical implementation.*
- *Having regard to the foregoing it is submitted that the application satisfies the pertinent considerations required by Section 96(1A) of the EP & A Act 1979.*

These comments are not entirely concurred with as the following assessment will demonstrate.

The S96 Amendment was forwarded to Council's Development Engineer who provided the following comments regarding each of the proposed amendments;

Condition 1A – Amending the approved plans to reflect a new staging plan:

No engineering objections to the re-staging of residential lots, however the Joshua Street link, Public Reserves, Drainage Reserve and Sewer Pump Station must ALL be provided with Stage 1, as reflected in the following comments.

Condition 22A – Construction of Joshua Street link Road as part of Stage 1:

The applicant originally requested deferment of this road link construction requirement, but now requests total deletion of this condition. This is not supported – but this condition is recommended for amendment.

The road link to Joshua Street has always been considered necessary as a second access point for the development, once Council allowed the public and drainage

reserves to be installed on rural zoned land, with allowances made for a future rezoning proposal.

Furthermore, the applicant has been fully aware of the protracted construction requirements due to "soft soils" (per Morrison Geotechnic investigations of 2004), so their initial plea for deferment was to be refused anyway.

The construction of the Joshua Street link MUST be completed prior to release of Stage 1. A significant change to the financial side of this requirement is that this section of road has now been inserted in to the TRCP (courtesy of changes made in March 2007),so the construction cost of this section of road now becomes Council responsibility.

Council currently has insufficient funds to construct this road link (within a time frame that suits the applicant), and will therefore be deferred until funds are available.

For the applicant to gain release of Stage 1, they will be required to construct the road link, and seek credit on the TRCP component of the required Sec.94 contributions, if applicable. The maximum value of the credit applicable is as per the Works Schedule of the TRCP (\$613,050 at 2007 rates). If construction costs exceed the TRCP Sec.94 contribution (and it will), the applicant can apply to carry over a credit (on the TRCP component of the Sec.94 charges) to another development within the same TRCP sector of Tweed Shire.

Note that the Sec.94 credit only applies if the road is built to it's final form Condition 22A will be amended to reflect this. See Item 4 below.

Supporting comments by Council's Traffic Engineer follow;

"The Joshua Street link road is essential for both the traffic generated by the subdivision and the general area in terms of traffic safety and public transport provision. The construction of this link was also agreed at the time of the original application. The timing of the construction of the "Frances Street link" is dependant on Council's budgeting (including S94 contributions) and works programming which can vary similar to the developer's construction priorities. The question of who is first to commence construction should not be a consideration in relation to the works required in a particular stage of this development. There is a commitment to provide the Frances Street link under Tweed Shire's Section 94 plan. Therefore the original condition should be retained."

The intent of the original condition will be retained, however amendment is required to reflect the TRCP credit applicable. Council's Planning & Infrastructure Engineer has provided advice in this regard.

Condition 24 – Construction of a round-a-bout at Joshua Street and Kendon Avenue:

No engineering objections are raised to the applicant's proposal to delete this condition. This is also supported by Council's Traffic Engineer.

The first sentence of this condition (requiring realignment) was included in a subsequent layout plan that has been approved, effectively satisfying initial concerns. Also the requirement for a roundabout has already been (alternatively) satisfactorily addressed in consultation with Council's Planning & Infrastructure Engineer:

"Council have accepted re-prioritising and signage in lieu of a roundabout, as "deemed to comply"."

This section of road is now under the TRCP and any design requirements are Council's own to pursue. Nevertheless a preliminary design has already been completed by Cardno (per CC07/0249 – as yet unapproved) which addresses the design requirements of this condition, so Council has a record of this plan to fall back on, if need be.

This condition will be replaced with a different condition addressing the required road link from Joshua Street up to the actual Stage 1 lots.

Condition 25A – In conjunction with condition 22A this condition would need to be amended so that a bus route is required as part of Stage 2:

No engineering objections to the deletion of this condition.

This has been confirmed in discussion with Council's Council's Planning & Infrastructure Engineer.

Since Council previously accepted a 50/50 cost split for the Frances Street link, with construction becoming Council's responsibility, the onus on the developer to provide a bus route through the site from Stage 1 has been negated. The timing of the completed bus route cannot now be imposed on the developer.

The applicant's stated request to defer the bus route to Stage 2 is peculiar and seems to contradict prior requests. Council will bear the pressure of completing the eastern link to Frances Street / West End Street, to enable provision of a bus route that will also service this development.

Condition 30A: As a consequence of staging this condition would need to be amended so that works specified therein are required as part of Stage 2.

Since the applicant's plan deletes road numbers, correlations will be made to original "Fig. 4" plan.

The section of Road 3 referred to in this condition, is one of two different sections of road (the other being the section of Road 1, between Lot 101 and Road 2), either of which must be constructed with Stage 1 as a link to Joshua Street.

Condition 31: The original S96 approved in December 2006 requested the deletion of this condition and recommended that this condition should not be deleted. However the covering letter indicated that it could be deleted however it was not deleted the applicant has subsequently requested that this S96 rectify that matter:

For the previous Sec.96 application, the Engineering recommendation was to RETAIN this condition, which was contrary to their request. It appears there was an oversight in Council's correspondence that mistakenly advised that this condition was to be deleted.

The section of road referred to in this condition traverses rural zoned land and is not essential for the functionality of the subdivision. Consent for full construction of this section of road would be pre-emptive of a favourable (future) rezoning proposal of the land. The condition is not to be deleted, but will be amended accordingly.

Condition 44: This condition requires the drainage reserve to be dedicated as part of Stage 1, the applicant is requesting this be done as part of Stage 2:

The deferment of the Drainage Reserve and Public Reserves to Stage 2 is refused. The Drainage Reserve must be fully functional from the very first release of lots. This has been stressed to the developer several times. Similarly, the Public Reserves must be provided for the public from Stage 1. All reserves must have fully constructed road frontages also.

The applicant is apparently under a misconception that Council will construct the Joshua Street link in accordance with Metricon's construction time frame. This is not the case. See comments under Condition 22A.

Furthermore, there is no guarantee when Stage 2 will occur, and this public infrastructure cannot be indefinitely delayed.

This submission does however raise the issue of wetland (drainage reserve) planting referenced in Condition 42. The wetland must be fully planted out as part of it's creation, or else it cannot function properly. Embellishment of the Public Reserve – shown as Lot 235 – can still be deferred as per this condition. The Public Reserve shown as Lot 143 (Riparian revegetation area along the river) is to be fully established as part of Stage 1. Condition 42 will be amended for clarification.

Condition 105A: The new staging plan will alter the number of allotments in each stage thus affecting this condition

The proposed new staging plan results in the following breakdown:

- Stage 1 – 41 allotments

This equates to 38 general ET's (due to credit), 37.4 ET for water, & 247 daily trips for TRCP

- Stage 2 – 33 allotments

This equates to 33 general ET's & 214.5 daily trips for TRCP

- Stage 3 – 22 allotments

This equates to 22 general ET's & 143 daily trips for TRCP

However, please note duplex blocks are charged at a single lot rate until such time as they are developed for dual occupancy purposes.

Condition 106A: The new staging plan will alter the number of allotments in each stage thus affecting this condition

To be amended in accordance with the revised staging plan as detailed above.

Submissions

The S96 application was initially advertised between 15 August 2007 and 29 August 2007 in accordance with S96. This involved an ad in the Tweed Link, notification to nearby residents and notification to those people who originally objected to the application.

As a result of the applicant amending the S96 to now delete Joshua Street link entirely rather than deferring it to Stage 2 the application was re-advertised between 10 October 2007 and 24 October 2007 in accordance with the amended S96. This involved a second ad in the Tweed Link, re-notification to nearby residents and re-notification to those people who originally objected to the application.

During these two exhibition times Council received 17 written submissions, from 11 individuals (one representing the Murwillumbah Ratepayers & Residents Association). One of these letters was also a letter of support for not utilising Joshua Street for access, as they say *Joshua Street is a very narrow street for a large increase in traffic*. This view is not considered to represent the wider communities public interest.

The issues raised in the objections to these modifications are detailed as follows:

<u>ISSUE</u>	<u>COMMENT</u>	<u>ASSESSMENT</u>
<u>Traffic</u>	<p><i>William Street already has traffic problems and should not be used as a major thoroughfare</i></p> <p><i>Use of William Street has and will cause traffic accidents. A more safe and efficient way to develop this subdivision needs to be found.</i></p> <p><i>The removal of these clauses will reduce vehicle access/egress to a single point of entry to the subdivision. This is totally unsuitable for the intended residents and the residents of the immediate area surrounding the subdivision</i></p> <p><i>There is a lot of history with this application and its approval</i></p>	<p>As detailed in the above report Council Officers are continuing to require the use of Joshua Street as another point of access to the development to ensure traffic is dispersed over multiple entry points.</p> <p>Appropriate conditions of consent are recommended.</p>

hinged on the outcomes of various traffic studies, to ignore all this time and effort would be intolerable.

The loss of a bus route is unacceptable.

Without the Joshua Street link all traffic will travel via Barnby Street, William Street, Baker street and connecting Streets onto Byangum Road. These roads are too narrow, too steep, have too many sharp corners, and poor vision. A connecting road to Queensland Road should be built from this subdivision before any development is considered.

A Joshua Street link will encourage people to use the road network as intended. It would be the quickest way to access Wollumbin High and Christian College in Hall Drive.

While West End Street connection would eliminate most of the street concerns mentioned so far.

We object vigorously to the above application to now delete conditions 22 and 24 as the application disregards the townsfolk view on traffic concerns.

To have another 10 0plus residences using William Street as access route, would be nothing short of disaster.

Having Joshua Street link built at the commencement of the development will also make it easier to get the ring road completed.

The proposed amendment would place further strain on a road that is already dangerous.

False Advertising

The applicant has made press release statements that they are working closely with Tweed Shire Council to relieve evident traffic issues. This S96 is completely contrary to these statements.

This objection is not considered specifically applicable to the current s96 Application.

This objection does not warrant any change to the proposed recommendation.

Soft Soils

Joshua Street can still be built into the estate despite discovery of soft soils.

These comments are concurred with and form part of the reason for requiring the Joshua Street link road.

The existence of soft soils has been known since the beginning.

This objection contributes to the

<u>Noise pollution</u>	<p><i>This is no reason to delay or delete the Joshua Street link road.</i></p> <p><i>Noise from trucks trying to gain momentum up William Street would be unreasonable.</i></p>	<p>reasoning for the proposed recommendation.</p> <p>William Street would still be an option for traffic coming too and from the site, however, by ensuring Joshua Street is constructed from the beginning this would ensure traffic dispersal and utilisation of more suitable roads for large and heavy machinery.</p>
<u>Landscaping</u>	<p><i>If they are serious then they will proceed with their landscaping as soon as is possible.</i></p> <p><i>If the landscaping to the public reserve is not completed as part of Stage 1, new residents would have to look further afield for green space and this would potentially add additional traffic to adjoining streets.</i></p>	<p>These comments are concurred with and form part of the reason for requiring the infrastructure at Stage 1.</p> <p>This objection contributes to the reasoning for the proposed recommendation.</p>
<u>Disregard for Community & Safety</u>	<p><i>The proposed amendment shows a flagrant disregard for the existing community and their safety. There has been a repeated effort by Metricon to make amendments that show no consideration for the well being of either the existing community or the new community they are proposing to establish.</i></p>	<p>This objection is noted.</p> <p>This objection does not warrant any change to the proposed recommendation.</p>
<u>Amenity</u>	<p><i>We chose to live here for the quiet amenity. The existing hoon element and noise from trucks is already affecting us. We will have the noise of the construction vehicles and therefore we ask that sound infrastructure is paid for and put in place by developers before construction commences</i></p>	<p>This objection contributes to the reasoning for the proposed recommendation.</p>

All of the above issues have been considered as part of the assessment of this Section 96 Application. The proposed recommendation incorporates and addresses the concerns that have been raised.

OPTIONS:

1. Approve the S96 Application in accordance with the recommended changes to the consent.
2. Refuse the S96 Application.



LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the determination of this application they have a right to make an appeal to the Land & Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Each proposed amendment has been assessed on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determination.

Having assessed the S96 Application against the applicable controls, the application is considered to warrant conditional approval to provide clarity of Council's requirements. Some of the proposed changes by the applicant are not supported and the conditions reflect this.

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.

P3 [PR-PC] Section 96 Application DA02/1983.12 for an Amendment to Development Consent DA02/1983 for the Use of Property for Filming and Producing a Television Program at Lot 74, 77, 93 DP 755715, Dungay Creek Road, Dungay

ORIGIN:

Development Assessment

FILE NO: DA02/1983 Pt5

SUMMARY OF REPORT:

Council is in receipt of an application to amend the subject development consent for the Granada Film Productions site located at Dungay ("I'm a Celebrity Get Me Out of Here").

One of the original conditions was to time limit the development as the applicant at the time foreshadowed the activity would be completed by 1st June 2004 and consequently the development consent was time limited to that date.

Due to the success of the programs internationally there have been opportunities for further productions and as such this is the fourth application that the applicant has submitted for an extension on the time frame. The last of these extensions was until 1 June 2008. The proposed extension is to time limit the consent to 1st June 2011, being a further 36-month extension.

The following report addresses the relevant provisions of the EP&A Act 1979, and the objections received by Council.

The recommendation is for the extension in time to be granted subject to further conditions to address environmental issues and complaints about the operation if they occur.

RECOMMENDATION:

That Section 96 Application DA02/1983.12 for an amendment to Development Consent DA02/1983 for the use of property for filming and producing a television program at Lot 74, 77, 93 DP 755715, Dungay Creek Road, Dungay be approved subject to the following conditions being amended: -

- 1. Amend the Consent to state at the end:**

The consent to expire on 1 June 2011

- 2. Add two new conditions as follows:**

- 1B. Prior to commencement of filming in the 2008/2009 Filming Session the applicant is to provide to Council a further flora and fauna assessment and a Plan of Management to address any environmental impacts from the filming activities for the duration of the consent. The assessment report is to include consultation with the Department of the Environment & Climate Change.**
- 1C. Prior to commencement of the filming in the 2008/2009 Filming Session the applicant is to obtain a current approval to operate an on-site sewerage management system.**
- 3. Council acknowledges that Conditions 34B and 34C have not been enforced for the current filming season as Granada have been liaising directly with persons with concerns. If the matter has required Council involvement Granada have contacted Council and sought resolutions as required. This process appears to be working better than last years process which did involve compliance with conditions 34B and 34C.**

Therefore it is recommended to amend conditions 34B and 34C to read as follows:

- 34B. Should Council receive complaints regarding use of the subject site Council can instigate the commencement of a Community Liaison Committee that consists of a representative of the local community, a representative of Granada Productions Pty Ltd, representatives from Council's Planning and Development Division, Environment and Community Services Division and Engineering and Operations Division. This Committee could monitor the performance of the Management Plan referred to in Condition 34A.**
- 34C. If the Community Liaison Committee is formed a community liaison officer and community contact phone number shall be available on a 24 hour basis on the days of the production (including 24 hours pre and post the commencement of the production). Details of the name of the contact person and the contact telephone number must be provided to Council, locally advertised and affected residents notified of these details by means of an individual letter drop to each household.**

REPORT:

Applicant: Granada Productions Pty Ltd
Owner: Mr CD Parker, Mr BW Parker, Mr ID Sharman and Ms LK Brannian
Location: Lot 74, 77, 93 DP 755715, Dungay Creek Road, Dungay
Zoning: 1(a) Rural and 7(d) Environmental Protection (Scenic Escarpment)
Cost: Not applicable

BACKGROUND:

Council is in receipt of an application to amend the subject development consent for the Granada Film Productions site located at Dungay ("I'm a Celebrity Get Me Out of Here").

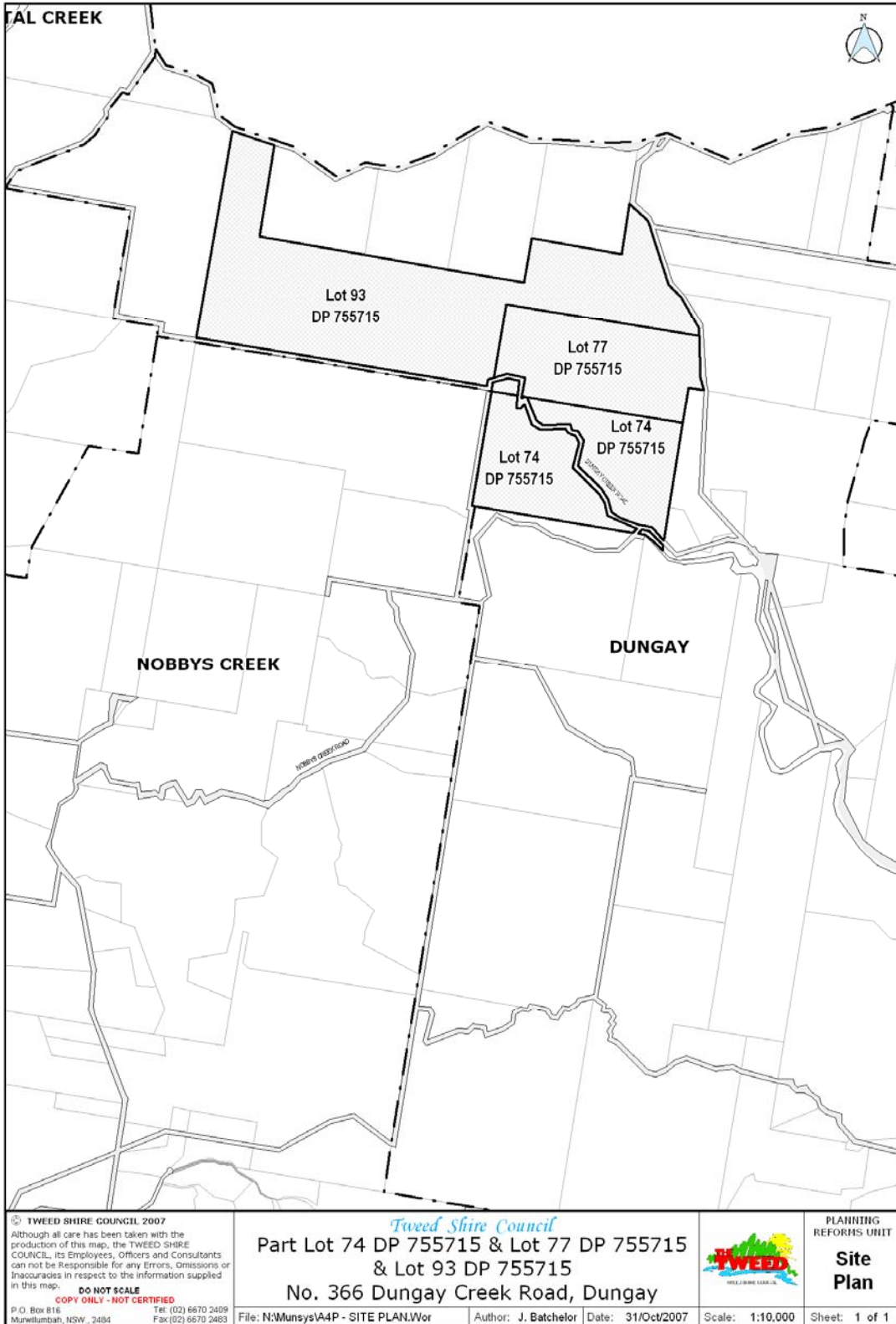
The Development Assessment Panel originally considered a report on the proposed activity on 20th December 2002 and approved the activity subject to a number of conditions. One of the conditions was to time limit the development as the applicant at the time foreshadowed the activity would be completed by 1st June 2004 and consequently the development consent was time limited to that date.

At the time of considering the proposal there was some uncertainty in relation to potential complaints and environmental impacts during operation. As such Council implemented a time limited consent and a requirement for a cash bond to the amount of \$20,000 for the rectification of any non-compliance with the conditions of this consent which may not be addressed upon completion of filming. These conditions have provided Council with an opportunity to review the activity and ensure the site is appropriately remediated.

Due to the success of the programs internationally there has been opportunities for further productions and as such this is the fourth application that the applicant has submitted for an extension on the time frame. The last extension of the approval lapses on 1 June 2008.

The proposed extension is to time limit the consent to 1st June 2011, being a further 36-month extension on the previous 48-month extension already granted.

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 96 & 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**Minimal Environmental Impact**

The proposed timeframe extension is not considered to result in environmental impacts. The extension of timeframe will result in the need for further permits for the activity and the permit and conditions will ensure that the continued use of the site meets the environmental controls for the activity.

Council's Environmental Health Officer has reviewed the history of the application to ensure the proposed extension will have minimal environmental impact. The following comments have been provided:

Original proposal:

- i) Period of 2 years ending June 2004,*
- ii) Utilising existing cleared areas for placement of infrastructure and existing sheds ,*
- iii) Siting of a "camp" with disturbances limited to securing the walking trails and campsite (camp site located within the 7(l) Environmental Protection Zone),*
- iv) Rearrangement of creek bed rocks and creation of artificial water pools.*

A Flora and Fauna Survey prepared by Peter Parker, dated Dec 2002, was submitted to support the original application and considered the limited duration of the activity in preparing his report as part of any assessment of adverse impact that may arise.

The camp site is located in a lowland subtropical rainforest with access via a mixture of rainforest and wet sclerophyll forest. Several uncommon and threatened plant species were recorded in the vicinity of the camp.

DLWC issued general terms of approval (GTA) with the original consent and considered the use of any plastic liner placed within the creek to be of a temporary nature only. 3A Permit required.

Granada Productions were notified by Council in Jan 03 that works carried out in-stream did not comply with conditions of consent and DLWC advised a 3A Permit had not been obtained and works were also not in accordance with their GTA.

A Supplementary flora and fauna assessment prepared by Peter Parker, dated Feb 2002 (however refers to a site inspection conducted on 24 Jan 2003 – supplementary assessment was submitted as support for an amendment [approved Mar 2003] to original application) "The development is time limited and will expire in June 2004. This will ensure that no long-term change in creek ecology will occur as the creek will be restored upon the completion of the project."

A Sec 96 Amendment was issued in Mar 03 with DLWC further requiring the in-stream pools to be partially removed or modified to allow normal stream processes

to occur upon completion of the filming between series and site restored back to natural state immediately following filming of last series. (This is in addition to original consent requirements by DLWC)

February 03 an approval was granted for the installation of an OSMS for a period of three years only due to the nature of the system proposed – pump-out. (SEP03/0018) An approval to operate the system was issued in Feb 06 (OSSM01371) for a period of 2 years.

Further amendments were applied for and granted allowing the activity to be extended to June 05, then further to Jun 06, then further again to Jun 08. Whilst a 3A permit is required for the continuation of the activity no further correspondence from DLWC (now DECC) is held on Council records as to the extension of time of the activity. The amendment requesting an extension of time until Jun 08 required the submission of a Site MP to address traffic, noise, hours of operation, night lighting, helicopter usage, solid waste removal, flooding, bushfire and notification of events to neighbours. A Community Liaison Committee was required to be set up to assist in the management of adverse impacts being expressed by local residents.

A further 3 years have now been requested.

The activity has been in operation for 5 years. Initial environmental assessments considered the temporary nature of the proposal. Anecdotal information suggests that fauna species are removed during the filming period to reduce the risk of harm to contestants. This had not been addressed in the initial assessment or the impact of the ongoing practice. Whilst DECC continue to require a 3A Permit as part of the operation no further assessments have been undertaken to address the longer-term impact of disturbance.

Therefore it is recommended that

- 1. A further flora and fauna assessment to be conducted to address the longer term impacts of the activity including consultation with DECC.*
- 2. Any consent issued will need to ensure a current approval to operate a system of on-site sewage management is maintained.*

In accordance with the above recommendation the two conditions above have been incorporated into the recommendation and need to be satisfied prior to commencement of filming in the 2008/2009 Filming Session.

Based on adoption and compliance with these conditions (in addition to all original conditions) it is considered that the proposal amendment is not considered to raise any additional environmental impacts.

Substantially the Same Development

The proposed activity is not being modified by the changes. The development will still be temporary in nature and the site will still be required to be remediated. The extension of time means that the remediation will be occurring 36 months later than the current consent permits.

It is not considered that a 36 month extension changes the nature of the development and as such the proposed modifications are considered to be acceptable.

Concurrence or Integrated Authority Consultation

The Act provides for consultation with state government authorities in the event that conditions to be amended are those imposed by or of interest to such agencies.

The activity operates under a Part 3A Permit under the Rivers and Foreshore Improvement Act 1948. The time frame extension does mean that permits will need to be extended for a further year, however, none of the conditions of consent are proposed to be removed and as such formal consultation in relation to the proposed amendment is not required.

However following determination Council is to advise the Department of Water & Energy of the change to the time frame to enable the provision of further permits.

Advertising and Consideration of Submissions

The proposed amendment was notified for a period of fourteen (14) days from Wednesday 18 April 2007 to Thursday 3 May 2007.

During this period Council received submissions from five (5) different properties. One of these five properties submitted five different submissions from various members of the family (total 9 submissions).

In September 2007 submissions from two of the properties was withdrawn (this involved 2 out of the five submissions in one family and one further withdrawal from another property). It is Council's understanding that Granada Productions have been liaising directly with those properties most affected by the filming operations. These negotiations led to the withdrawal of the original objections.

Subsequently there are 6 submissions remaining to be considered (3 of which are from the one household).

In addition to these six submissions, Council received a written letter detailing some suggestions for road improvements from the local bus driver. This submission further provided that Granada is always approachable and helpful with any matters arising. These road issues are separate to this application and have been raised with Council's Road Safety Officer.

Furthermore, Council received one letter of support for Granada which stated that they should be able to stay in the area as it is a good thing for the community.

The submissions raising an objection to the proposed S96 addressed the following issues:

Issue	Comment	Assessment
Traffic	<i>The arrival and ongoing presence</i>	Use of the subject site for the

Issue	Comment	Assessment
	<p><i>of Granada Productions has created a very real traffic problem for the local road system, especially Dungay Creek Road and the feeder roads.</i></p> <p><i>The huge increase in traffic poses an unacceptable risk to local road users and the school buses.</i></p> <p><i>The local bus driver has had to nearly fall off this little road to let Granada traffic go by. The bus is also held up by having to let them go by.</i></p> <p><i>The roads are unsuitable and a fear for young children waiting for the bus when staff drive erratically past.</i></p>	<p>purposes of filming for a production of this size does involve the use of large trucks and multiple vehicles to accommodate staff and crew.</p> <p>The area is a rural locality with appropriate rural roads.</p> <p>Granada sealed part of Dungay Creek Road five years ago to better meet the filming needs and the community safety needs that had been addressed.</p> <p>Council's Traffic Engineer has provided that the roads are suitable and capable of accommodating the required traffic.</p> <p>However, people using these roads need to drive to suit the conditions.</p> <p>Granada have recently advised that they</p> <p><i>"had recently dismissed an employee for continued irresponsible driving. We continue to monitor driving and drivers and we provide all crew with a package setting out permitted speeds etc."</i></p> <p>Continued monitoring by Granada is recommended.</p> <p>These objections are not considered to warrant refusal or further amendment to the application.</p>
<p>Lifestyle</p>	<p><i>This is really an outrageous imposition on our rural life styles. It was originally only going to be for a year and it has been extended and extended for reasons which are not very clear Who is getting benefit? Granada by having a cheaper setup than if it were to filmed nearer to Movie World on the Gold Coast? The residents have had their peace and quiet ruined.</i></p> <p><i>On behalf of the people who live next door the extra noise and visual pollution each year is very</i></p>	<p>There is no doubt that the presence of Granada Productions in the community is noticed and subsequently has an impact on the locality.</p> <p>The most noticeable impact is on immediately adjoining property owners.</p> <p>These property owners have been in direct negotiations with Granada to try and ease the impact of the filming season. These negotiations have resulted</p>

Issue	Comment	Assessment
Economic Value	<p><i>audible and visible. The novelty has certainly worn off. They are now unwelcome and are being asked to move on. Granada feel as if they own the valley. They have even told electrical contractors to come back in two months when they are gone.</i></p> <p><i>Most of the workers come from QLD Accommodation for the film set is mainly over the border. The producers tell the English that it is filmed in QLD. There is little benefit to Tweed as workers are QLD It could be filmed anywhere. Why in an area with limited access and an area that has maximum disturbance to local residents.</i></p>	<p>in most of the objections being withdrawn.</p> <p>Three submissions from the one property remain.</p> <p>These objections to lifestyle implications need to be assessed against the permissibility of the filming activity and the broader community benefit of the production.</p> <p>It is considered that filming activities at the subject site benefit the broader community and on that basis these objections are not considered to warrant refusal of this application or further amendment.</p> <p><i>Granada have provided the following information about the production of "I'm a Celebrity Get Me Out of Here":</i></p> <p><i>Granada's production of I'm a Celebrity – Get Me Out of Here Series 7 (IAC7) will involve over \$3.8 million of direct expenditure in the Tweed Shire region. The Australian Film Commission in a report titled "The Economic Contribution of a Film Project" suggests that such direct expenditure will have a multiplied effect on economic activity in a region. The most relevant multiplier for IAC7 is the "Queensland – Film, television and entertainment software" multiplier which is 1.34. Use of this multiplier suggests that the impact on economic activity in the Tweed Shire region from IAC7 will be over \$5 million.</i></p> <p><i>Granada intends to employ 63 local residents to work on IAC7. In addition to direct financial benefits for these locals, employment on IAC7 will improve their skill sets and give them experience that may not otherwise be available in the Tweed Shire region.</i></p> <p><i>The large contingent of crew associated with I'm a Celebrity –</i></p>

Issue	Comment	Assessment
Liaison Committee	<i>The local resident liaison committee member is not a spokesman for local residents.</i>	<p><i>Get Me Out of Here spend significant sums in the Tweed Shire region. We cannot accurately estimate the amount of this indirect expenditure but reports we have received from locals suggest that the amount of additional business is quite substantial.</i></p> <p><i>If Council approves the Section 96 Variation and Granada continues to use the location, the economic benefits from future series of I'm a Celebrity – Get Me Out of Here will continue to be enjoyed by the Tweed Shire.</i></p> <p><i>Granada has and will continue to strive to address local residents concerns relating to our use of the Dungay Creek location.</i></p> <p><i>Granada believes that its continued use of the Dungay Creek location will bring benefits to the Tweed Shire that far outweigh any negative impact on local residents.</i></p> <p>These comments are concurred with and form the basis of the recommendation for approval.</p> <p>The difficulty with successful implementation of the Community Liaison Committee is finding a volunteer community member who is independent yet willing to offer spare time to mediate conflicting view points.</p> <p>Due to the difficulty in achieving this in the 2006/2007 Filming Session and Granada's offer to liaise and negotiate directly with those members of the community with concerns this process was not followed in the 2007/2008 Filming Session.</p> <p>Therefore the following recommendation is proposed:</p> <p><i>“That Council acknowledges that Conditions 34B and 34C have not been enforced for the current filming season as Granada have been liaising directly with persons with concerns. If the matter has</i></p>

Issue	Comment	Assessment
Environmental issues	<p><i>As a wildlife consultant there is a decrease in the smaller, native rainforest birds and an increase in the everyday suburban variety of bird.</i></p> <p><i>Have you done an environmental impact study? I think the environment is being damaged by the prolonged over population at the end of the valley.</i></p>	<p><i>required Council involvement Granada have contacted Council and sought resolutions as required. This process appears to be working better than last years process which did involve compliance with conditions 34B and 34C."</i></p> <p>It is further recommended that conditions 34B and 34C are amended slightly to reflect that</p> <p><i>"Should Council receive complaints regarding use of the subject site Council can instigate the commencement of a Community Liaison Committee ..."</i></p> <p>This enables Granada to continue in its mediation role until such time as a problem arises that Council feels the situation would benefit from a Community Liaison Committee.</p> <p>As detailed in the above report – prior to commencement of filming in the 2008/2009 Filming Session the applicant is to have approved by Council a further flora and fauna report and a Plan of Management to address any impacts.</p> <p>These objections are therefore not considered to warrant refusal of this application or further amendment.</p>

IT IS ACKNOWLEDGED THAT LOCAL RESIDENTS ARE IMPACTED DURING THE TIMES OF FILMING, DURING THE PRE PRODUCTION AND DURING THE WRAP PERIOD DUE TO THE ADDITIONAL TRAFFIC. IN ADDITION IT IS ALSO ACKNOWLEDGED THAT THE BUILD UP TO FILMING CAN BEGIN IN SEPTEMBER RESULTING IN A DISTURBANCE TO AMENITY FOR UP TO 5 MONTHS A YEAR. HOWEVER, GRANADA HAVE ENDEAVOURED TO MITIGATE THE IMPACTS OF TRAFFIC AND THEIR FILMING ACTIVITIES WHENEVER REQUESTED TO DO SO. BASED ON THIS ASSESSMENT THE S96 APPLICATION FOR A TIME EXTENSION IS RECOMMENDED FOR APPROVAL.

OPTIONS:

1. Approve the S96 Application in accordance with the recommendation
2. Refuse the S96 Application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the determination they have a right to appeal the decision in the Land & Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The original assessment of the application concluded by providing that: -

"The subject land is considered to be suitable for the proposed development. The environmental attributes of the site have made it desirable as a location for the proposed filming. These attributes are valued by the applicant and as such will be protected through environmental management measures within a plan for the site.

The remediation of the land following completion of the development will be of benefit. It is considered that the addition of activity in the Dungay Creek area will be able to be undertaken in a manner to limit nuisance to other residences"

These comments are still concurred with. Furthermore, the economic impacts to the broader community as a result of the continuation of the production are considered beneficial to the community and subsequently this application is recommended for approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Original Development Assessment Panel report dated 20/12/2002 (DW 713895)
 2. Development Consent DA02/1983 (as amended 13/10/2006) (DW 1481147)
-

P4 [PR-PC] Section 96 Application DA07/0457.03 for an Amendment to Development Consent DA07/0457 for Demolition of an Existing Building & Erection of a McDonald's Restaurant at Lot 1 DP 543048; Lot 1 DP 781505; Lot 723 DP 820649, No. 63 Minjungbal Drive & Parry Street, Tweed Heads South

ORIGIN:

Development Assessment

FILE NO: DA07/0457 Pt2

SUMMARY OF REPORT:

Development Consent for the demolition of an existing building and erection of a McDonald's Restaurant was granted 3 August, 2007.

The approved development constitutes a family restaurant and McCafe with adjoining children's 'playland' and terraced dining area. A drive-through ordering area was also approved along the western boundary of the site. The approval limited the hours of operation for the entire development to 5.00am to 12 midnight only.

The proposed amendments incorporate an extension of the trading hours for the drive through component only (24 hour trading) and a reduction in the amount payable for the Tweed Road Contribution Plan. NSW Police Service has provided written support of the change in trading hours subject to the implementation of additional security measures for the site.

The proposed modifications received one (1) submission.

RECOMMENDATION:

That Section 96 Application DA07/0457.03 for an amendment to Development Consent DA07/0457 for demolition of an existing building and erection of a McDonald's Restaurant at Lot 1 DP 543048; Lot 1 DP 781505; Lot 723 DP 820649, No. 63 Minjungbal Drive & Parry Street, Tweed Heads South be approved subject to the following amendments as follows:

1. Condition 21 be deleted and replaced with Condition 21A as follows:

21A. Prior to the Construction Certificate being issued, a Site Management Plan for the ongoing use and management of the site shall be prepared and submitted to the satisfaction of Council's General Manager or delegate. The Plan shall include but is not limited to the management of mechanical plant and associated equipment (particularly where noise levels can be altered), closure

and management of the car park area between 12am and 5am daily, management of the Playland area, proposed site security including management of patrons and antisocial behaviour, monitoring and management of litter, and general site management.

The recommendations of the NSW Police Service (letter dated 3 September 2007) are to be incorporated into the Site Management Plan. The Site Management Plan shall detail how all of these recommendations are to be implemented.

The approved Site Management Plan shall be kept onsite and implemented upon commencement of restaurant operations.

2. Condition 24 be amended as follows:

24A. 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) <i>Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) Sector2_4</i>	<u>\$95,094.14</u>
(b) <i>Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18</i>	\$276.96

3. Condition 131 be deleted and replaced with Condition 131A as follows:

131A The trading hours for the restaurant shall be limited to the following:

- *24 hours, seven days a week for the drive through facility only.*
-

- ***5am to 12 midnight, seven days a week for the internal and external dining areas and the car park area.***
4. The following new PCC condition be added:
- Prior to the issue of a Construction Certificate, details of the proposed barriers for the car park area are to be prepared and submitted to the satisfaction of Council's General Manager or delegate.***
5. The following new USE condition be added:
- Physical closure of the car park area by use of substantial barriers to the satisfaction of Council's General Manager or delegate shall occur from 12 midnight to 5am, seven days a week.***



REPORT:

Applicant: McDonalds Australia Limited
Owner: Transit Management Pty Ltd
Location: Lot 1 DP 543048; Lot 1 DP 781505; Lot 723 DP 820649, No. 63 Minjungbal Drive & Parry Street, Tweed Heads South
Zoning: 3(c) Commerce and Trade
Cost: Nil

BACKGROUND:

Development Consent for the demolition of an existing building and erection of a McDonald's Restaurant was granted 3 August, 2007.

The proposed site for the development is the old Von Bibra Affordable Cars sales yard with the approved development being a family restaurant and McCafe with adjoining children's 'playland' and terraced dining area. A drive-through ordering area was also approved along the western boundary of the site.

The Restaurant has approval for 70 internal dining room seats and 40 external dining seats in the terrace area. The original application proposed to operate on a 24 hour / 7 days a week basis, however the approval limited the hours of operation to that of 5.00am to 12 midnight only.

PROPOSED DEVELOPMENT

It is proposed to amend conditions 24 and 131 of Development Consent DA07/0457.

Condition 24 refers to Section 94 Contributions applied to the approved McDonald's Restaurant. The proposed amendment to condition 24 relates specifically to S94 Plan No. 4 – Tweed Road Contribution Plan.

The applicant has provided documentation from Viney Traffic Engineering regarding survey data supporting the proposed reduction in daily trips for the purposes of calculating the appropriate TRCP charges. The original TRCP calculations were based on a rate of 296.4 trips per day, resulting in a monetary value of \$253,236. The applicant seeks to apply an adjustment factor for the approved McDonald's Restaurant, based on shared purpose journeys.

A full copy of survey results has been provided by the applicant in support of the above amendment to the adjustment factor for TRCP calculations.

Condition 131 relates to the approved hours of operation for the McDonald's Restaurant and reads as follows:

131. The trading hours for the restaurant shall be limited to between the hours of 5am and 12 (midnight), seven days a week.

The applicant proposes the condition to be amended to include the following:

The trading hours for the restaurant shall be limited to the following:

24 hours for the drive through facility, seven days a week;

5.00am to 12 (midnight) for the internal and outdoor dining areas, seven days a week; and

5.00am to 12 (midnight) for the car park area, seven days a week.

Physical closure by the use of substantial barriers, of the car park area shall occur from 12.00am to 5.00am, seven days a week.

The proposed amendments make no changes to the physical structure of the building, nor do they impact upon car parking requirements.

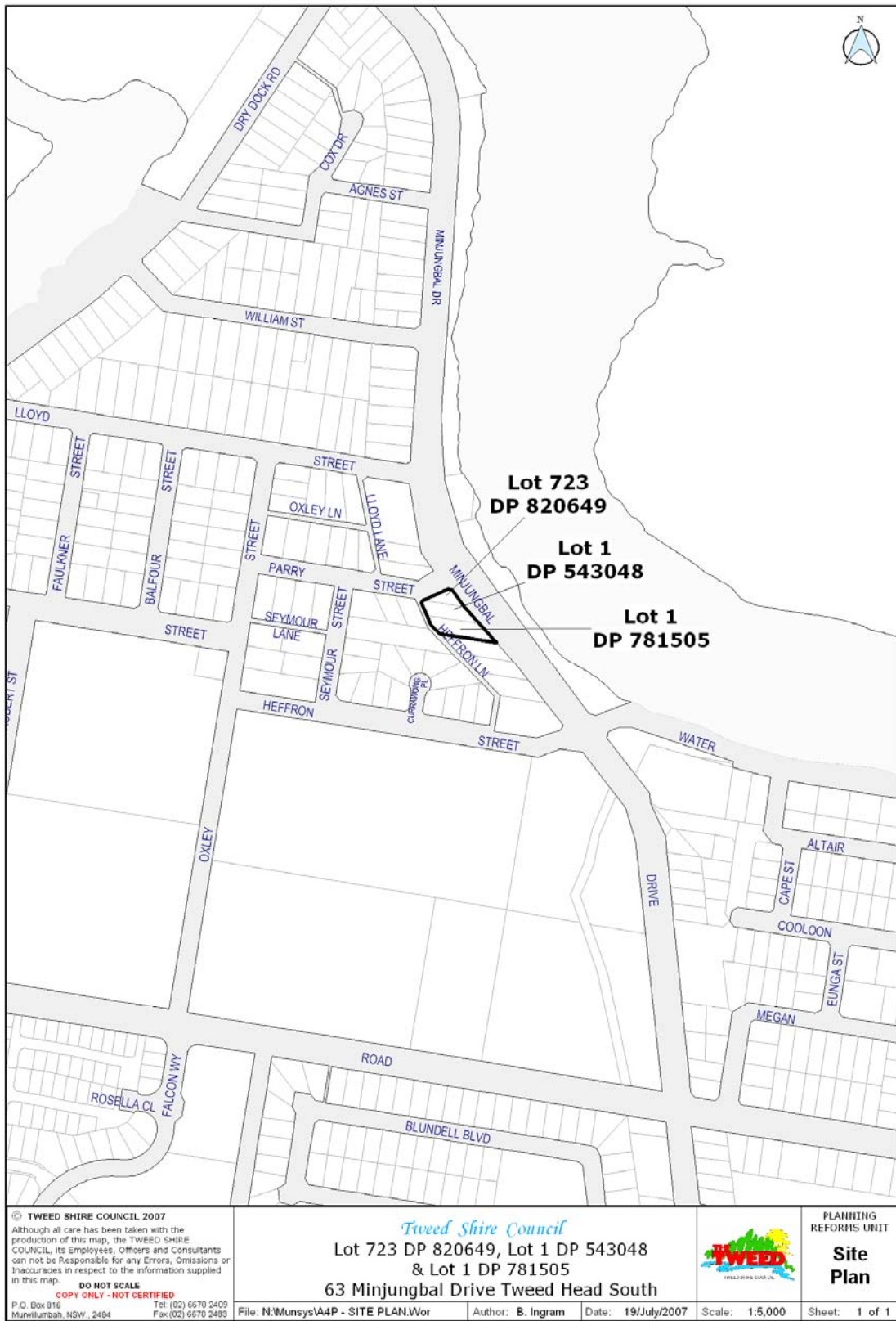
Additional Supporting Information

The applicant has provided documentation from the NSW Police Service based on enquiries into the operations of McDonald's stores at Burleigh, Southport and West Virginia. The Police Service has commented that *"24 hr drive-through operation only has not had a significant adverse impact on local crime or anti-social behaviour"* in any of the stores mentioned above. The Police Service made a number of recommendations, as follows:

- *"Closure of the internal and outdoor dining areas from 12am to 5am*
- *Physical closure, by use of substantial barriers of the car park area from 12am to 5am;*
- *The lane on the western boundary between Parry Street and Heffron Street be designated "One Way" south-bound from Parry Street to Heffron Street;*
- *Clear Signage displayed to advise south bound motorists on how to enter and depart the site;*
- *That recorded CCTV surveillance be installed to monitor customer movements, particularly the car park and all sections of the drive through area;*
- *That CCTV surveillance be positioned and be of the quality to maximise the chances of offender facial and vehicle identification;*
- *That suitable lighting be installed on the site to maximise the effectiveness of the CCTV surveillance and view (natural surveillance) of the site from the adjacent roads;*
- *Due consideration be given to pedestrian movement across Minjungbal Drive;*
- *That provision be made for a bike rack as specified in the site plan signage schedule".*

The above recommendations made by the NSW Police Service have been incorporated into conditions of consent. Namely the Site Management Plan will need to detail how all of the above recommendations will be implemented. The Site Management Plan is to be submitted to the satisfaction of Council prior to the issue of a Construction Certificate.

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 96 & 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

Section 96 (1A) of the Act states that in order to grant consent, the consent authority must consider the following:

- '(a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require and**
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations.'*

Substantially the Same Development

The proposed modifications relate to the trading hours and Tweed Road Contributions applicable to the approved development. The amendments do not result in any changes of the external appearance, layout of the building or car parking configuration, with the proposal considered to be substantially the same development.

Likely Environmental Impact

The main issues with the proposed amendment to condition 131 to allow the drive through to operate 24 hours relate generally to noise impacts, safety and security and traffic impacts. The proposed amendment to condition 24 to reduce the amount payable for the Tweed Road Contribution Plan is not considered to generate any environmental impacts.

As noted previously in this report, the proposed amendments were referred to the NSW Police Service for any applicable comment pertaining to the 24 hour operation of the drive through.

1. Noise

Council's Environmental Health Officer returned no objections to the original application after reviewing potential noise impacts of the proposal. Sources of noise were identified as plant and equipment noise, traffic noise, noise from the drive-through remote order point, general site usage and noise generated from 24 hour operation.

The proposed amendments were forwarded to Council's Environmental Health Officer for further comment with respect to potential environmental impact as a result of an increase

to the hours of operation of the drive-through component of the restaurant. A summary of their comment is provided below:

“A detailed noise assessment prepared by Max Winders and Associates prepared for the original development application indicated that conservative maximum noise levels had been adopted for the site, particularly in relation to night time operation. As such, noise mitigation measures have been incorporated into the design and operation of the site to comply with these levels. This comment is still considered appropriate to the development”.

Council's EHO has recommended appropriate amended conditions relating to management of the site with respect to mechanical plant and associated equipment, closure and maintenance of the car park area and management of the Playland area.

2. Safety, security and surveillance

Previous correspondence from the NSW Police Service (dated 17 July, 2007) raised issues of safety and security pertaining to the 24 hour operation of convenience stores and service stations in the Tweed Heads/Coolangatta area. The issues relate to anti-social behaviour stemming from the congregation of youths and others which will have a dramatic impact on the immediate community and policing resources.

More recent correspondence from the NSW Police Service (dated 3 September, 2007) draws on investigations into the operations of McDonald's restaurants at Burleigh, Southport and East Virginia that operate under the 24 hour drive-through scenario. Based on inquiry with local police in the above areas, the NSW Police Service have commented that drive-through operation in itself has not been found to have a significant adverse effect on local crime or anti-social behaviour. However, it was found that safety concerns exist when pedestrians attempt to utilise the drive-through windows.

As such, a number of recommendations have been made by the Police Service aiming to minimise safety and security issues stemming from the proposed 24 hour drive-through operation. These recommendations include the physical closure of the car park area and the installation of CCTV surveillance and lighting.

Council's Environmental Health Officer has noted the above concerns, and incorporated same into conditions of consent. Physical closure of the car park by use of substantial barriers to the satisfaction of Council's General Manager or delegate shall occur between the hours of 12 midnight to 5am daily is recommended to occur by way of conditions.

3. Traffic

This application to modify the trading hours for the approved drive-through is not considered to create any additional traffic issues for the surrounding road network. The closure of the car park by way of physical barriers is considered to negate any potential for anti-social behaviour. Appropriate conditions of consent have been applied in this regard.

The original application was referred to the Development Traffic Advisory Group (DTAG) for comment, however, Council's Planning and Infrastructure Engineer advised that the nature of the proposed amendments did not warrant further referral to DTAG.

Conclusion

The overall proposed modifications are considered to be acceptable in that they result in no change to the appearance of the proposal originally approved, with little or no impact resulting on the surrounding environment.

Contributions

The TRCP rates for the original application were calculated using an adjustment factor of 0.65 (i.e.: 35% of fast food trips are linked or shared with some other trip purpose). The applicant seeks a reduction in the amount payable for the Tweed Road Contribution Plan. The proposed amendment is supported by a Traffic report which specifies survey results for existing McDonalds Restaurants. The survey data suggests that purpose made trips to McDonalds (i.e. home to McDonalds to home) make up an average of 25% of all trips to McDonalds.

Therefore, the applicant has requested that Council reviews the original TRCP calculation for the restaurant, specifying a "more appropriate" adjustment factor of 0.25%. This would effectively reduce the TRCP rate from \$252,236 to \$86,802 (based on an amended trip rate of 102 trips/day).

The proposed amendments have been forwarded to Council's Planning and Infrastructure Engineer who has provided the following comment:

"A S94 application was lodged to vary the TRCP contribution as permitted under clause 7.3 of the TRCP No.4 Version 5.

The original submission contained a Traffic Report that claimed only 10% to 20% of all trips generated by McDonalds were single purpose trips as opposed to shared purpose trips, but this was not substantiated and justification was requested.

McDonalds undertook surveys of 5 similarly sized and located stores in South East Queensland. These results were forwarded on 21 November 2007 but McDonalds have requested that this information be kept confidential as it contained much more commercially sensitive information than just traffic generation issues.

The findings of the results are summarized in the Traffic Consultants Report dated 15 October 2007 which showed single purpose trips to McDonalds averaged 25% of total trips generated.

The TRCP Table 7.2 states that 65% of trips are single purpose trips and this was the basis of the TRCP calculation.

I have reviewed the study / survey submitted by the applicant for the stores at Calamvale, Sunnybank, Goodna, Kenmore and Yamanto and the data collected is

detailed and extensive and does demonstrate that averaged access the stores 25.4% of all trips were solely generated as single purpose trips.

This data meets the requirements of clause 7.3 “Self Containment and Disputes” as set out in the TRCP.

Accordingly the revised TRCP contribution is as follows:

$$\begin{aligned} \text{Trips} &= \frac{405}{100} \times 200 \times 0.254 = 205.74 \\ \text{Less existing credits 3 lots} &= 1905 \\ \text{Trips attributable} &= 186.24 \end{aligned}$$

$$\begin{aligned} \text{TRCP} &= \$851 \times 186.24 \times 0.6 \\ &= \underline{\underline{\$95,094.14}} \end{aligned}$$

Consideration of Submissions

The proposed modifications were advertised for a period of 14 days, from Wednesday 14 November to Wednesday 28 November. As of Tuesday 27 November, only one submission had been received. Any additional submissions shall be reported to the Council meeting of 4 December, 2007 under separate cover.

The issues raised by the objection were subject of due consideration during the assessment of the original approved development. The following table lists the issues raised by the submission.

Issues raised	Council response
Cars “racing through” Parry Lane	This issue was taken into consideration at the time of assessment for the original approval with appropriate conditions of consent applied. Approval of 24 hour trading for the drive-through component of the restaurant is not considered to result in any significant increase in the volume or speed at which vehicles will utilise Heffron Lane when frequenting the approved premises.
People loitering/graffiti/safety issues	Advice received from the NSW Police Service suggests that 24 hour drive through operation alone does not have a significant adverse effect on local crime or anti-social behaviour. The installation of CCTV surveillance for the Restaurant was applied as a condition of Development Consent DA7/0457, and this also applies to the proposed amendments for the car park/drive-through area for this application.
Devaluation of nearby properties	Council has received no evidence pertaining to the devaluation of properties

	located in proximity to fast food restaurants. Further, impact upon property value is not a consideration under S79C of the Environmental Planning and Assessment Act 1979.
Alternative site	Council's role is in assessment of proposed developments lodged by applicants/developers. In any event, the McDonald's Restaurant has been approved on the subject site under Development Consent DA07/0457 and the matter of an alternative site does not warrant consideration in this instance.

Public interest

The proposed modifications to Development Consent DA04/0457 are considered to be acceptable in terms of public interest. Appropriate conditions of consent have been recommended in order to mitigate any potential impacts raised by the proposed amendments to DA07/0457.

OPTIONS:

1. Approve the proposed modifications that result in a reduced amount payable for the Tweed Road Contribution Plan and allow the drive through component of the proposal to operate 24 hours while the restaurant operates 5.00am to 12 midnight daily.
2. Refuse the application, leaving the applicant with the existing approval for 5am to midnight trading and current Tweed Road Contribution Plan charges.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has a right of appeal if dissatisfied with the determination.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Having regard for all of the issues raised by the proposed amendment and applicable matters of consideration under Section 79C of the Environmental Planning and Assessment Act 1979, the proposed modifications are considered to be acceptable.

As noted above, a detailed assessment has been conducted with regard to the traffic and security impacts of 24 hour operation of the drive-through. In addition, a review of applicable TRCP charges has been undertaken by Council's Planning and Infrastructure Engineer. Therefore, the s96 1(a) application should be supported, subject to the recommended amendments to Development Consent DA07/0457.



UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.



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