

TITLE: [PR-PC] Development Application DA06/1332 for an Animal Establishment for Greyhounds at Lot 3 DP 701833, No. 3808 Kyogle Road, Mount Burrell

ORIGIN:

Development Assessment

FILE NO: DA06/1332 Pt1

SUMMARY OF REPORT:

The Development Assessment Panel at a meeting on 26 August 2005 refused a Development Application for greyhound kennels. A request for a S.82A 'Review of Determination' resulted in Council again refusing the proposal on 30 November 2005. At that time, an Appeal was lodged with the Land & Environment Court but was later withdrawn.

The applicant has since engaged an Acoustic Engineer to prepare a more substantial Noise Report and also a Planning Consultant to assist in lodgement of a new application. That application is the subject of this report.

Local complaint and concern about noise from the barking dogs remains constant with disturbances being diarised and documented. The neighbours have also engaged an Acoustic Engineer to substantiate their claims.

In summary, the issue of noise emissions remains contentious. The applicant has not satisfactorily demonstrated that the impact of barking can be reasonably reduced or eradicated to an acceptable level. In the physical context of the valley and in view of the record of complaint which appears to be accurate and documented over an extended period, it is recommended that the permanent siting of this dog breeding establishment should not be approved.

RECOMMENDATION:

That Development Application DA06/1332 for an animal establishment for greyhounds at Lot 3 DP 701833, No. 3808 Kyogle Road, Mount Burrell be refused for the following reasons: -

- 1. The proposed development fails to satisfy the primary objective for the 1(a) Rural zone under the Tweed Local Environmental Plan 2000 in that it would not protect the rural character and amenity.**
- 2. The proposed development fails to satisfy Clause 17 of the Tweed Local Environmental Plan 2000 in that it would have a significant social impact upon the local community.**
- 3. The proposed development fails to satisfy Clause 15 of the Tweed Local Environmental Plan 2000 in that it cannot ensure there will be adequate measures to protect the environment and the community's health.**

- 4. The proposed development fails to satisfy Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979 in that it is not supported by adequate information to allow a proper assessment in relation to impact upon the rural and natural environment.**
- 5. The proposed development fails to satisfy Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979 in that it would have an unreasonable and adverse impact upon the rural environment and neighbouring properties in terms of noise emissions.**
- 6. The proposed development fails to satisfy Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979 in that the suitability of the site has not been adequately demonstrated.**
- 7. The proposed development fails to satisfy Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 in that because the adverse impacts cannot be properly assessed, it is not in the public interest.**
- 8. The proposed development fails to satisfy Section 79C(1)(d) of the Environmental Planning and Assessment Act 1979 in that the application has attracted a number of public submissions in the negative which have raised matters which are considered to have merit.**

REPORT:

Applicant: Mrs LL Green
Owner: Mr A Sinclair and Mrs LL Green
Location: Lot 3 DP 701833, No. 3808 Kyogle Road, Mount Burrell
Zoning: 1(a) Rural
Cost: \$3,000

BACKGROUND:

- Council first received complaints concerning noise emissions in December 2004. As a consequence, Council officers inspected the premises on 12 January 2005. Although advised by the owners that there were 20 dogs on site, 30 were counted and appeared to be housed in less than sanitary or suitable accommodation.
- The owners were advised to remove all but two dogs which were allowed as domestic pets, **OR** seek Development Consent for the unauthorised land use. They were advised at the time that it was **unlikely** that any application would be approved given the existing level of complaint concerning environmental disruption from barking.
- A Development Application was lodged on 17 June 2005 and advertised for public comment. Five objections and a petition (with 24 signatories) were received. The Development Assessment Panel (DAP) refused the application on 26 August 2005 for the following reasons:
 - "1. *The proposed development fails to satisfy the primary objective for the 1(a) Rural zone under the Tweed Local Environmental Plan 2000 in that it would not protect the rural character and amenity.*
 2. *The proposed development fails to satisfy Clause 17 of the Tweed Local Environmental Plan 2000 in that it would have a significant social impact upon the local community.*
 3. *The proposed development fails to satisfy Clause 15 of the Tweed Local Environmental Plan 2000 in that it cannot ensure there will be adequate measures to protect the environment and the community's health.*
 4. *The proposed development fails to satisfy Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979 in that it is not supported by adequate information to allow a proper assessment in relation to impact upon the rural and natural environment.*
 5. *The proposed development fails to satisfy Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979 in that it would have an unreasonable and adverse impact upon the rural environment and neighbouring properties in terms of noise emissions.*
 6. *The proposed development fails to satisfy Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979 in that the suitability of the site has not been adequately demonstrated.*

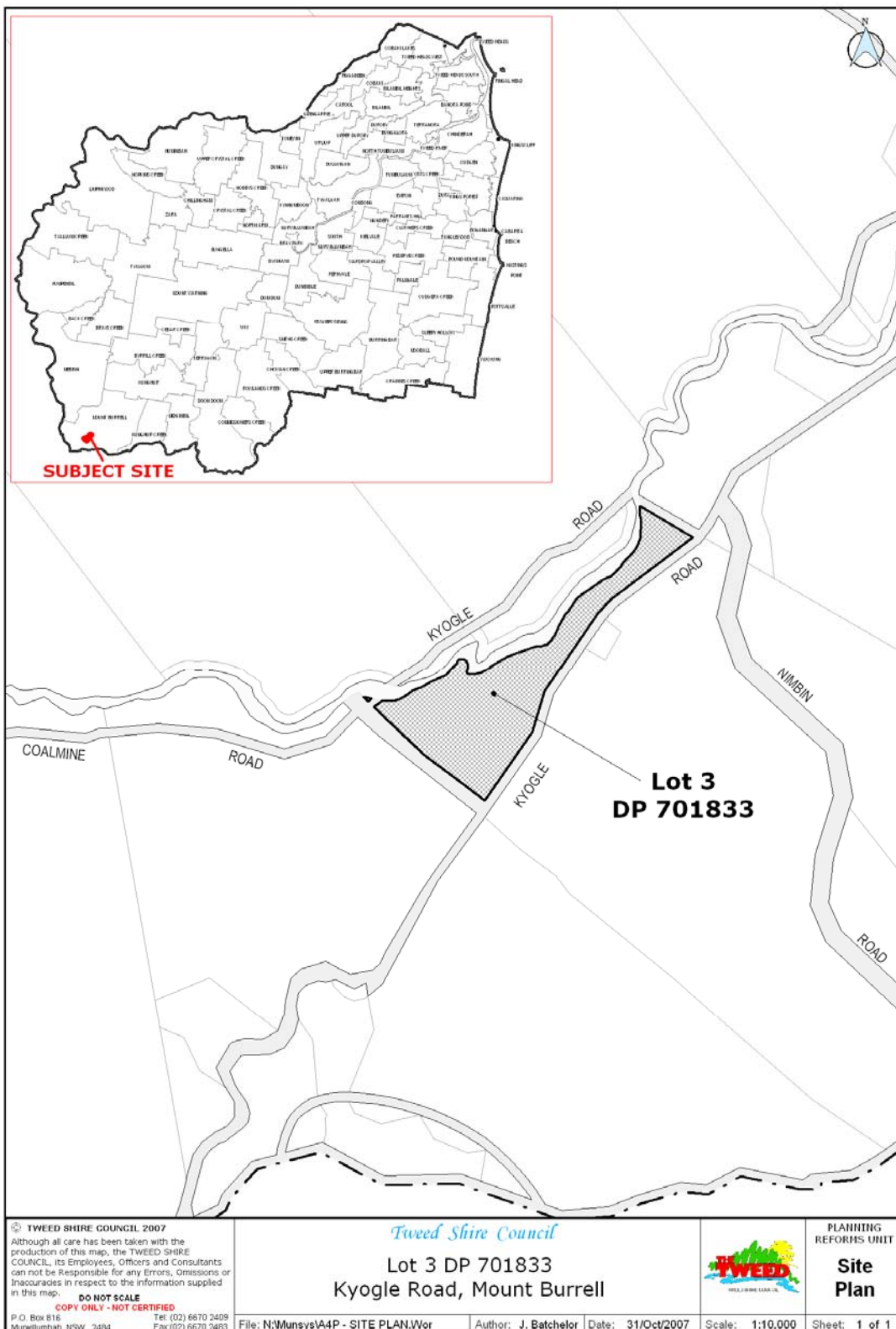
7. *The proposed development fails to satisfy Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 in that because the adverse impacts cannot be properly assessed, it is not in the public interest.*
 8. *The proposed development fails to satisfy Section 79C(1)(d) of the Environmental Planning and Assessment Act 1979 in that the application has attracted a number of public submissions in the negative which have raised matters which are considered to have merit."*
- The applicant then lodged an Appeal with the Land & Environment Court on 16 September 2005. This Appeal was later withdrawn.
 - In addition to lodging the Appeal, the applicant sought a Review of Determination under S82A. A recommendation for Refusal was again upheld by Council on 30 November 2005
 - The applicant then engaged an Acoustic Engineer and a Planning Consultant to prepare a more substantial proposal. This new material will be considered in this report.
 - It should be noted that Council has continued to receive complaints from neighbours concerning the noise from barking. Complainants then engaged their own Acoustic Engineer to assess the impacts. That submission has now been assessed by Council's Environmental Health Officers and is considered to be critical in any final recommendation.

Proposal:

- The applicants propose to adapt an existing shed constructed of colorbond, into a set of accommodation kennels for greyhounds. There is no detail provided except that they intend to insulate the roof and walls, and pipe music to calm the dogs.
- Up to 30 dogs would be bred for racing and sale. 11 adults with the remainder being pups.
- Effluent would be disposed of through a 78 Li settling tank with a central baffle and an outlet filter in conjunction with 10m² of centrally fed ETA bed. This proposal (based on report from Pooh Solutions), is an improvement on the previous application which simply nominated a worm farm with no specific details given.
- A dog run separated into 6 separate yards measuring 42m x 5m are proposed (and currently operational). It would be surrounded by an 1800mm high colorbond fence. This application identifies plant species which would be planted around the exercise yard to visually screen it.

An exercise machine would be housed within the main shed.

SITE DIAGRAM:



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Lot 3 DP 701833
Kyogle Road, Mount Burrell
 File: N:\Munsys\A4P - SITE PLAN.Wor Author: J. Batchelor Date: 31/Oct/2007



PLANNING REFORMS UNIT
Site Plan
 Scale: 1:10,000 Sheet: 1 of 1

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

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

Tweed Local Environmental Plan 2000

- The subject land is zoned Rural 1(a) where the two primary objectives are to:
 - *“enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development*
 - *to protect rural character and amenity.”*
- The proposed use is classified as an “Animal Establishment” which is defined as:

“a building or place used for any one or more of the purposes of intensive animal husbandry, or the boarding, training or keeping of animals...generally requiring the importation of feed from outside the land on which the establishment is conducted.”

- It is considered that although it maybe “ecologically sustainable development”, this particular land use does not satisfy the other primary objective in that it would not necessarily protect the amenity of the rural area. There is a pre-existing record of complaint concerning noise, apart from the 13 representations lodged during public notification (discussed later in report).

North Coast Regional Environmental Plan 1988

It generally satisfies the NCRP.

State Environmental Planning Policies

No particular SEPPS are relevant.

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

None relevant.

(a) (iii) Tweed Development Control Plan

Section A11 - Public Notification of Development Proposals

The proposal was publicly notified in accordance with the DCP. The substance of written objections is examined later in this report.

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

None relevant.

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

Noise/amenity

- Although it is proposed to insulate the roof and walls, the shed would still remain open on one side (facing south) with no enclosure devices. The idea of noise containment is dubious, especially since significant noise is generated outdoors in the ‘exercise run’ – not contained within the kennels where the dogs are often more settled.
- The information submitted in the application in regard to ‘distances to neighbours’ is both inaccurate and contradictory. These facts are critical when assessing likely impacts above ambient noise levels.

To illustrate, several of the plans are not drawn to scale and the stated dimensions contradict other plans submitted – for example, one plan is notated with the house being 33m from the Kyogle Road and the next plan shows 100m.

The key issue is the separation from neighbours. The application indicates that one neighbour to the south is 600m distance, whereas in fact the residence is 430 m from the kennels and only 380m from the exercise run where the pups would be kept.

- As noise is pivotal in any appraisal of an animal establishment, the applicant has lodged a ‘Noise Assessment’ report prepared by Garry Hall. Council’s Environmental Health Officers considered there were several procedural and technical problems with how that Acoustic Report was prepared and how its conclusions were reached. A request for further information resulted in some clarification, but on balance, it was still not supported by the Environmental Health Officer. A ‘Noise Management Plan’ has still not been submitted in the form of a working document and the applicant has been given numerous opportunities to address outstanding issues without success. No alternative management arrangements were offered like changing the early ‘exercise’ hours (5:30am), or relocating the exercise run further to the east.
- To provide an alternative perspective, the objectors engaged their own acoustic expert to comment upon the application’s Noise Report, and to offer a second independent comment.
- That Engineer concurs with the applicant’s expert specifying a “design goal being 35dB(A)” – but points out that the performance figures and a neighbours documented reports of night time noise outbreaks (29 x in 8 week period) suggest that the dogs do not meet the agreed “design goal being 35dB(A)” and therefore fails the test of satisfying the Industrial Noise Policy. The Engineer concludes that “the noise generated by the

kennels does adversely impact on the neighbouring receptors by at least 7, 9 and 12 dB(A).”

- This view is supported by Council’s Environmental Health Officer.

On-site Sewage Management System

- Effluent from the kennels would be disposed of through a 78 Li settling tank with a central baffle and an outlet filter in conjunction with 10m² of centrally fed ETA bed. This proposal (based on report from Pooh Solutions), is an improvement on the previous application which simply nominated a worm farm with no specific details given.
- The proposed on-site grey water treatment and disposal method for wash-down water is considered acceptable.
- The disposal of solid waste to landfill is considered too heavy a load for Council’s waste contractor – with on-site composting being encouraged.
- It is concluded that the proposed OSMS would be adequate to maintain standards of hygiene.

Animal Welfare

- The standard of animal habitation and sanitation was considered poor when inspected in January 2005. The applicant has not demonstrated how the establishment will comply with the ‘NSW Agricultural Code of Practice - Dogs & Cats in Animal Boarding Establishments’. The applicant claims she *“has managed a dog pound in City of Knox (Vic.) and has 40 years experience in breeding and managing kennels with a spotless record.”*

In conclusion, the Environmental Health Officer does not support the proposed development primarily because of concerns over the Acoustic Reports methodology and findings, and the extensive level of local complaint.

(c) Suitability of the site for the development

- In view of the anecdotal evidence presented by the neighbours who now have the benefit of 35 months hindsight, it is considered to be an unsuitable site. Although it is a rural property of moderate size (9.25 ha), it appears the natural ‘amphitheatre’ topography allows the sound to carry to an unreasonable extent so as to create an environmental nuisance.

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

Following public notification between 6 to 20 December 2006, thirteen (13) letters were received – although another three letters of complaint have been received since. This level of negative response is significant for three reasons.

It represents written correspondence from **all adjacent neighbours**. It is rare that 100% of neighbours complain about a development proposal.

Secondly, thirteen separate letters from a low density rural population just prior to Christmas is considered to be a significant response. It represents genuine concern and should be assessed together with other letters of complaint received by Council in the past two years from local residents.

Thirdly, these complaints and representations have been consistent over time – with residents having had to write to Council a second time in response to a fresh application (DA06/1332) – the first application (DA05/0701) having been refused. Their submissions are not anticipating a future possible environmental impact – but rather represent a commentary with hindsight as the kennels already exist.

The following is a summary of those submissions:

Ground of objection	Response
<p>Noise</p> <ul style="list-style-type: none"> ▪ Extended and intermittent periods of barking and howling experienced for more than 2 years – normally lasting 90 -120 mins at dawn, during afternoon and late at night. It is particularly disturbing when barking outbursts occur during night. ▪ Proposed design makes no real attempt to mitigate noise. If approved, there would be a permanent nuisance from noise. ▪ Written complaints were submitted before DA lodged – the record of complaint precedes the application. 	<ul style="list-style-type: none"> ▪ The written complaints have been consistent and unabated –extending before the application was lodged. ▪ The submissions are quite detailed and specific – with diarised accounts having been recorded documenting the precise time of disturbance. ▪ In view of these submissions which represent all neighbours, and taking into account the concerns of the Environment and Health Services Unit about the methodology and conclusions of the applicant's acoustic report, the application is recommended for refusal.
<p>Effluent</p> <ul style="list-style-type: none"> ▪ The quantity of dog excrement is a concern given the proximity of the Tweed River. A composting bin may or may not be managed 	<ul style="list-style-type: none"> ▪ An improved system for the disposal of effluent has now been proposed with a 78 Li settling tank with a central baffle, outlet filter with a 10m2

Ground of objection	Response
adequately to cope with the loads of faeces generated. Concerns about disease – particularly an outbreak of canine Parvo virus or hydatid.	<p>of centrally fed ETA bed.</p> <ul style="list-style-type: none"> ▪ Council's Waste Management Officer advises that the proposed Onsite Sewer Management System would be adequate to maintain standards of hygiene.
<p>Water quality</p> <ul style="list-style-type: none"> ▪ Contamination of the creek is a concern if excrement filters through and is not properly treated. Nutrient and bacteria levels may pollute the waterways. 	<ul style="list-style-type: none"> ▪ Advice from Council's Waste Management Officer suggests that effluent should be successfully resolved on site. There is consequently no evidence of any environmental threat to the river system.
<p>Social Fabric</p> <ul style="list-style-type: none"> ▪ The community has advised of "intimidation and tension" as a result of this land use which has had an adverse social impact upon the local residents. 	<ul style="list-style-type: none"> ▪ This is a difficult aspect of land use planning to accurately comment upon – except to say that it is important issue for the authors of the representations. Although a subjective matter, it still represents a valid consideration which should be taken into account in the balance of any assessment and ultimate decision.
<p>Animal Care</p> <ul style="list-style-type: none"> ▪ No indication of how well the dogs will be cared for – of any overseeing body or scrutiny of living standards for the greyhounds. 	<ul style="list-style-type: none"> ▪ This issue is not a primary planning consideration – but is more properly assessed and controlled by animal welfare organisations. There is no particular evidence at this stage of any unreasonable breach in terms of care.

In summary, it is apparent there is considerable community unrest and resistance to any permanent establishment of the grey hound breeding kennel.

Finally, one of the complainants has submitted a doctor's report confirming poor health and ailments as a direct consequence of stress caused by the barking dogs.

(e) Public interest

It is not considered to be in the public interest to permit a landuse to become established when there is a known record of complaint. It would not create any significant employment or social benefit, but is known to create a measure of social unrest within the existing neighbourhood.

OPTIONS:

1. Refuse the application based on the eight reasons for refusal provided.
2. Refuse the application but modify the reasons for refusal.
3. Approve the proposal in principle and request appropriate conditions for approval be submitted to the next Council meeting.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with Council's decision, the applicant can lodge an appeal which would be determined by the Land and Environment Court.

POLICY IMPLICATIONS:

Nil

CONCLUSION:

Although an Acoustic Report has been submitted in this second application, there are still real concerns about its methodology and conclusions. The independent reports from acoustic experts are polarised in their conclusion which suggests that noise emissions are still a critical and inconclusive issue. The local testimony challenges the applicant's expert advice. The local complaints and concerns about barking remain constant with disturbances being diarised and documented.

On balance, it is considered that the applicant's proposition that noise is incidental and manageable is not substantiated. On the contrary, in view of sustained and documented concern about the local environmental disturbance, the proposal is recommended for refusal.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

TITLE: [PR-PC] Review of Determination of Development Application DA06/1332 for an Animal Establishment for Greyhounds at Lot 3 DP 701833, No. 3808 Kyogle Road, Mount Burrell

ORIGIN:

Development Assessment

FILE NO: DA06/1332 Pt1

SUMMARY OF REPORT:

Council at its meeting of 22 April 2008 resolved to defer this report to allow the applicant adequate time to address the Administrators.

The report is reproduced in full below.

The Development Assessment Panel at a meeting on 26 August 2005 refused a Development Application for greyhound kennels. A request for a S.82A 'Review of Determination' resulted in Council again refusing the proposal on 30 November 2005. At that time, an Appeal was lodged with the Land & Environment Court but was later withdrawn.

The applicant has since engaged an Acoustic Engineer to prepare a more substantial Noise Report and also a Planning Consultant to assist in lodgement of a new application.

Local complaint and concern about noise from the barking dogs remains constant with disturbances being diarised and documented. The neighbours have also engaged an Acoustic Engineer to substantiate their claims.

The Review was reported to Council on 13 November 2007 where Council again resolved to refuse the application.

The applicant then lodged another S.82A 'Review of Determination' application. This is the subject of this report.

In summary, the issue of noise emission remains contentious. The applicants have **not** added any additional information or evidence to support their proposal. They have simply put it back to Council for a review. A different Environmental Health Officer has assessed the noise impacts and made a fresh appraisal. This independent review has again drawn the same conclusion that the use generates unacceptable environmental impacts and should be refused. The same consistent level of community concern was registered through submission of 14 separate written representations all in the negative.

RECOMMENDATION:

That Council reaffirms the determination for refusal of Development Application DA06/1332 for an animal establishment for greyhounds at Lot 3 DP 701833, No. 3808 Kyogle Road, Mount Burrell.

REPORT:

Applicant: Mrs LL Green

Owner: Mr A Sinclair and Mrs LL Green

Location: Lot 3 DP 701833 No. 3808 Kyogle Road, Mount Burrell

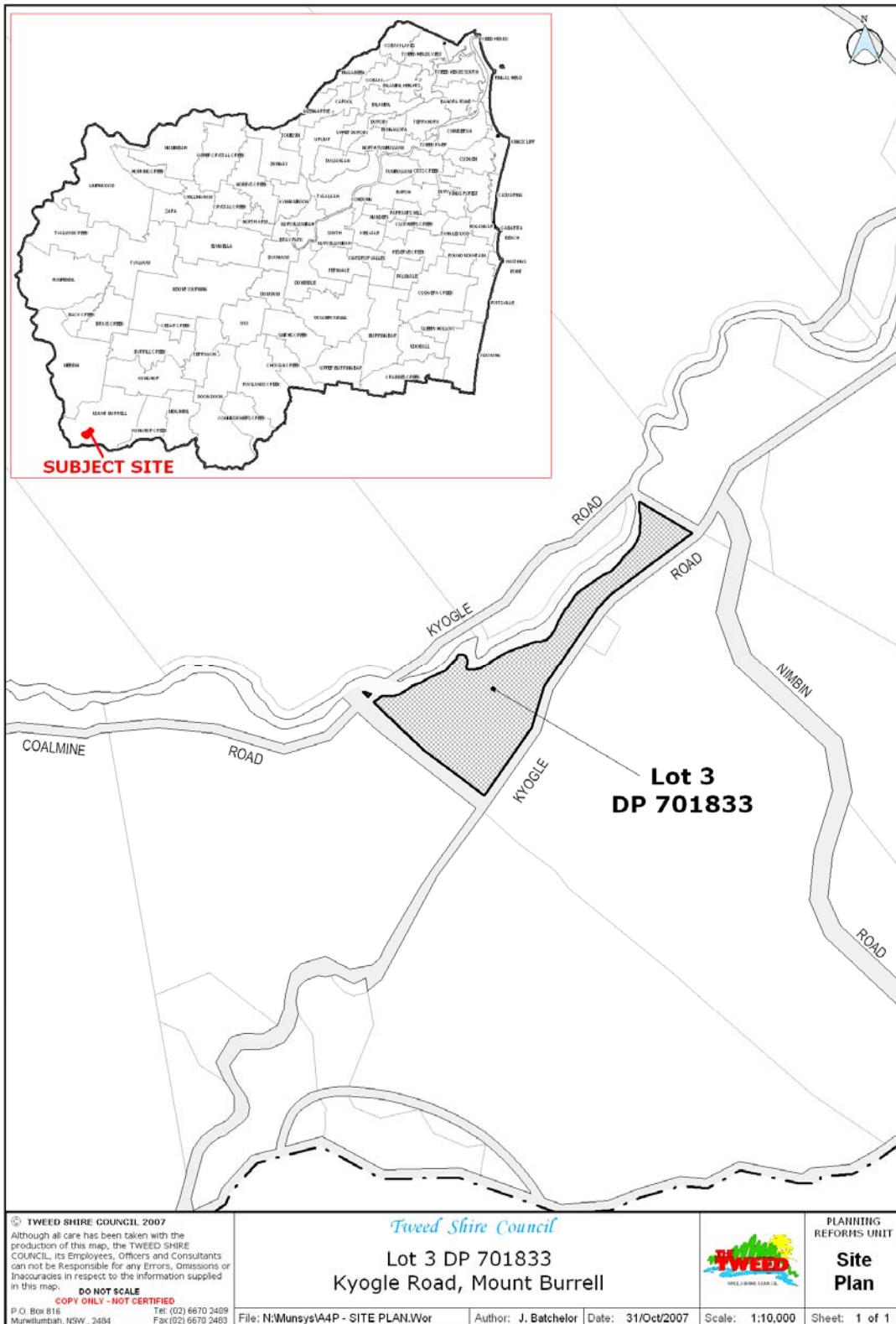
Zoning: 1(a) Rural

Cost: \$3,000

BACKGROUND:

As per summary.

SITE DIAGRAM:



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 File: N:\Munsys\A4P - SITE PLAN.Wor Author: J. Batchelor Date: 31/Oct/2007



PLANNING REFORMS UNIT
Site Plan
 Scale: 1:10,000 Sheet: 1 of 1

OPTIONS:

1. Reaffirm Council's previous refusal of the application.
2. Approve the application subject to conditions.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

In view of no change to the application a consistent conclusion from an independent Environmental Health Officer and a similar comprehensive reaction from the local neighbours, the same report submitted to Council in November 2008 is attached.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Council's report on DA06/1332 of 13 November 2007 (DW 1698815)
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