

Please Quote
Council Ref:

[dltr]

Your Ref No:

For Enquiries
Please Contact: Vince Connell

Telephone Direct (02) 6670 2423

17 June 2009

FILE COPY

Dear Sir/Madam

Recommended actions in respect of compliance issues relating to the property No. 2 Boulder Close, Byangum

I have prepared this correspondence to respond to a number of complaints received from the owners of property Nos. 4 and 7 Boulder Close in respect of the activities of the farm operations of No. 2 Boulder Close, and to put forward a suggested way forward among each of these property owners as a means to resolve the ongoing complaint regarding the glare impacts of various structures on No. 2 Boulder Close. This correspondence has been sent to the owners of Nos. 2, 4 and 7 Boulder Close.

Firstly, in order to become more familiar with the various land use and compliance issues, I have visited each of the sites and spoken at length to the property owners of Nos. 2, 4 and 7 Boulder Close. I have also sought detailed briefings from relevant staff of Council's Development Assessment and Building and Environmental Health Units, who have also made multiple site visits in recent months.

I have provided below a summary of the results of the latest investigations made by Council staff in response to the various complaints made to Council by the owners of Nos. 4 and 7 Boulder Close:

Issue 1 - A plastic and meshing protective sheeting structure was erected several months ago above a strawberry plantation adjacent to the subject site's Kyogle Road frontage is causing unreasonable glare and drainage run-off impacts, and should be the subject of a Development Application (DA).

I have previously advised the owners of Nos. 4 and 7 Boulder Close that I did not consider that the nature and scale of this structure warranted the submission of a DA, given that it is temporary by nature, with no fixed footings, and is typical of many other similar structures found throughout Tweed Shire Council, for which a DA has not been required. The extent of stormwater run-off from the plastic sheeting of this structure is considered to be minimal, and did not warrant any further compliance issue, in the context of the broader drainage issues affecting this locality, which is discussed in more detail below.

Recommended Action: No further action should be taken in respect of these issues.

However, I did consider the complaint of excessive glare being created by the use of the plastic sheeting was valid, after viewing the structure from the much higher position of the property to the rear, No. 7 Boulder Close, which forms a cumulative impact when added to the glare created by the white material of the main "hot House" structures which were approved in the original DA for the farm activities of No. 2 Boulder Close.

Recommended Action: The glare issue is valid and needs to be addressed by the owner of No. 2 Boulder Close. A recommended approach to the broader glare issue is further addressed below.

Issue 2 - Stormwater run-off and drainage impacts from the existing hot house structures, and more recent works required for the car park area and fruit and vegetable stall approved by Council in a DA earlier this year.

This issue has arisen in various complaints, primarily from the adjoining owner of No. 4 Boulder Close. This owner has consistently claimed that the owner of No. 2 Boulder Close has failed to provide appropriate stormwater capture and diversion for both the original hot house structures, and the more recent strawberry patch sheeting structure and fruit and vegetable stall and car park, which creates a significant run-off and pooling of water in the lower end of his property towards his front driveway and road access from Boulder Close in times of moderate to heavy rainfall. There were also more specific drainage complaints relating to the inadequate storage and fixtures of adjoining water tanks (a loose fitting recently burst creating significant overflow) and disposal of run-off from the roof guttering of the main hot house structures, and lack of provision of stormwater diversion to Council's table drain in the adjoining Kyogle Road road reserve.

The issue of providing adequate stormwater drainage on the subject site for the various farm activities is complicated by the general topography, landscape and hydrology of this locality, and subsequent landform modifications on both the subject site, and the adjoining property, No. 4 Boulder Close. The subject site is located in the lower point of a valley and surrounded by very high, steep sloping, rocky outcrop landforms, which naturally creates fast flowing water overflows in times of moderate to heavy rainfall, combined with occasional rising flood waters from the river on the opposite side of Kyogle Road. The owner of No. 4 Boulder Close has acknowledged that there was a natural stormwater flow path running diagonally across from the subject site's Kyogle Road frontage down to the low point of the driveway entrance to No. 4 Boulder Close. It is claimed that the increasing structures on the subject site are exacerbating the extent of this concentration of water, to the detriment of the adjoining owner. This issue has been complicated by the construction of the driveway through this lower part of No 4 Boulder Close, seemingly without related drainage pipes, which has created an artificial gully which adds to the countering of the natural overland flow.

Regardless of these complexities, Council officers have acknowledged that some of the complainant's drainage concerns were valid, and have worked with the owners of No. 2 Boulder Close to address these issues, as evidenced through the following officer reports from various site inspections:

INSPECTION 1 (17 March 2009)

"With reference to our conversation yesterday, I have carried out an inspection at the above property and discovered that the property owner in fact has complied with my notice and run overflow pipes from the water tanks out to roadside drain in Kyogle Road. I have also asked the property owner to clean the gutters on the shed and add an additional overflow drain to the tanks to prevent water escaping. The contours of the property excepting the pads that the sheds are on have been changed slightly but I do not think it should affect the complainants property Mr Sack 4 Boulder Ct as the contour now pushes the water away from the dividing boundary. It should also be acknowledged that a small creek runs through both properties which would distribute water. In light that the properties are both in a flood prone zone and dwellings on both the properties are built on high ground it would be hard to determine exactly where the water is coming from."

INSPECTION 2 (27 March and 8 and 28 April, 2009)

"Upon receipt of a complaint from Mr. Bob Sack an inspection was carried out on 27 March 2008 at the above described property and it was discovered that the 3 water tanks located at the side of the property which collects water from the existing shade houses had no overflow piping to the table drain in Kyogle Road. The tanks are used to water the plants within the shade houses. The overflow in question was allowed to run onto the ground and flow into a gully which runs across this property and the property owned by Mr. Sack. Subsequently a notice was issued to the property owner to comply with the Section 68 storm water approval for the property which stated that all storm waters were to be conveyed to the Kyogle Road table drain. Twenty eight days was given to carry out the necessary work. A further inspection on 28 April 2008 revealed that Mr. Mishtler had carried out the work and the three tanks were

connected into 1 disposal system which relayed storm water to the Kyogle Road table drain. Mr. Sack was advised of my inspections but he was still not happy and insisted that water was still escaping onto his property near the front gate. I tried to explained to him that the storm water on his property may not all be coming from the adjoining neighbor as my observations had revealed that Mr. Sacks house and shed was also not connected to a storm water disposal system and was just allowed to hit the ground and run down his driveway. On 8 April 2009 I visited Mr. Sack at his property with reference to his phone call advising that in the recent heavy rain the storm water overflow system had failed at 2 Boulder Close with 1 tank bursting and some of the overflow pipes pulling a part. Mr. Sack e mailed photos to me with reference to the issue and I advised that I would address the issue as soon as possible. He also again complained about water escaping onto his property near his front gate and I advised that this situation may be rectified when the construction of the car park had been completed for the fruit vegetable stall recently approved by Council. My most recent conversation with Mr. Sack was that I had not had a chance to revisit this problem due to work load and he also advised that he was contacting you regarding the temporary structure on the property which was also causing a storm water issue. We should take into account the contours of both properties and the natural gully that runs through both properties. In my opinion this gully should be running the excess overflow into a dam located on the property owned by Mr. Sack. But unfortunately Mr. Sack or the previous owner has built up the driveway on the property and the water can no longer reach the dam. Although the photos show a large amount of excess water entering Mr. Sacks property it is also my opinion that some of the water problems may be emanating from the poor storm water disposal system on the property owned by Mr. Sack. The action I have planned is to ensure that the burst water tank is repaired and that all storm water disposal piping is glued at the joints to eliminate them pulling apart under pressure at the property owned by Mr. Mishtler at 2 Boulder close Byangum.”

INSPECTION 3 (14 May 2009)

“On 14 May 2009 between the hours of 11.15am and 12.15 pm an inspection was carried out of the above described property by Councils Director of Planning and Regulation Mr Vince Connell, Councils Senior Health and Building Surveyor Mr Barry Stegeman and Councils Building Compliance Officer Mr Colin Richardson in the presence of the property owners Mr and Mrs Mishtler with reference to concerns received by Council in relation to concentrated stormwater escaping from the property due to inadequate overflow pipes from three water tanks situated on the property, reflectivity issues in relation to the existing shade cloth hot house structures and the new temporary structure when covered with clear plastic and also construction of the car park area for the Council approved Fruit and Vegetable Stall which included drainage of stormwater from this area.

1. Car Park Area for Council Approved Fruit and Vegetable Stall.

Inspection of this area revealed that earth works had been carried out to the car park area for the stall with the laying of a wet gravel base which was being compacted by machinery. A dirt mound approximately 300mm in height had been built up adjacent to the dividing fence with 4 Boulder Close [Property owner- Mr Bob Sack.] together with a channel drain so that the overland flow of water would no longer escape onto 4 Boulder Close and create a nuisance. Mr Barry Stegeman advised the property owner that in his opinion the dirt mound needed to be extended approximately 4 Metres along the fence to ensure that water does not escape on to the neighbouring property. Sediment and erosion barriers had been installed along the fence line within the construction area for the car park but Mr Mishtler has been advised that at present they are considered to be inadequate due to the said fence not being dug into the ground. Mr Mishtler was advised of the correct installation procedure and he has advised that he will carry out the correct installation forthwith. As the earthmoving contractor was still on site the dirt mound was extended the required distance immediately. It should also be noted that the head walls that have been used for the cross over from Boulder Close into the new

car park are in a state of disrepair due to stress cracks and chips which have exposed the steel reinforcing within the two headwalls.

2. Overflow from Tanks on the above property.

Inspection of the tanks have revealed although 90 mm overflow pipes are connected to each tank and then joined to 150mm pipes which convey overflow waters to the table drain in Kyogle Road it has been advised by Councils Senior Health and Building Surveyor that the 90mm pipes connected to the tank would not be sufficient to take the overflow waters away from the tanks and that to prevent any overflow waters escaping from the top of the tanks or creating unnecessary water pressure in the tanks he has advised that an additional 100 mm overflow pipe should be connected to each tank which would alleviate the situation.

3. Reflectivity from Existing Hot House Structures and Temporary Structure.

A complaint has been received from Mr Trevor Ostrenga from lot 7 Boulder Close with reference to him suffering glare impacts from the existing hot house structures which are coloured white and also glare from a clear plastic cover which is sometimes laid over the top of the Council approved temporary structure to protect the growing strawberries from frost. The house occupied by Mr Trevor Ostrenga is located in an extremely high elevated position on the property and it overlooks the hot houses and the temporary structure at No 2 Boulder Close Byangum. Councils Director of Planning and Regulation, Mr Vince Connell has visited the property owned by Mr Ostrenga and confirmed his complaint regarding glare impact from the said structures.

On 14 May 2009 between the hours of 12.15pm and 12.45pm the adjoining neighbour at No 4 Boulder Close, Mr Bob Sack was interviewed at his property by Councils Director of Planning and Regulation, Mr Vince Connell with reference to his concerns about the operation and overflow of stormwater from the property owned by Mr and Mrs Mishtler at 2 Boulder Close. Mr Sack proceeded to show photographs in relation to storm water impacts on his property together with his claims that nutrients were escaping from the hot houses on the adjoining property and blocking up his dams with vegetation during periods of heavy rainfall. He also indicated that the property owner of 2 Boulder Close had not complied with his Development Consent as he had not planted trees in the correct positions to minimise impact. He also referred to the new car park area for the fruit stall at 2 Boulder Close and his impression that the dirt mound bank was required to be extended to deny the flow of stormwater onto his property and the fact that car park area in question was only constructed with a compacted gravel base. Mr Sack was promptly advised that the situation with extending the bank had been rectified by the earthmoving contractor on site and that the drainage had been cut inside the mound to convey stormwater to the Boulder Close table drain. Mr Sack indicated that he was happy with this arrangement but was concerned that even though the overflow pipes from the water tanks are now glued he still has concerns that the overflow pipes are still not sufficient enough to convey overflow waters to the Kyogle Road table drain. His concerns regarding the size of the overflow pipes was acknowledged and that Council would speak to Mr Mishtler regarding adding additional overflow pipes to the said tanks. Mr Sack indicated that he had no concerns in relation to glare impacts from 2 Boulder Close as mature grown trees stop the impact.

Conclusion

The complaint by Mr Sack with reference storm water entering his property near his front gate has been addressed by the construction of a dirt mound, sediment and erosion barriers and a drain which now conveys water to the Boulder Close table drain.

Mr Vince Connell is to check the Planning Development Consent for the property at No 2 Boulder Close with reference to the allowance for a compacted gravel base car park area for the Council approved Fruit and Vegetable Stall. Councils Building Compliance Officer will

reinspect the property to ensure that the sediment and erosion barrier complies with Development Consent. Direction is requested by Councils Building Compliance Officer if a notice is to be issued to Mr Mishtler of 2 Boulder Close with reference to the installation of another 100 mm overflow pipe to each water tank to alleviate overflow from the top of the tanks and pressure build up within the tanks. Mr Mishtler has already indicated that he is reluctant to carry out this work as he considers that there is only an issue in heavy rain events. He also indicated that the spring fed gully adjacent to the water tanks and which also runs through the property owned by Mr Sack can no longer escape into the dam network on Mr Sack's property as he has built up the driveway on his property and not laid any piping to convey the overflow of waters into the dams. Councils Director of Planning and Regulation is to liaise with the Manager of Development and Assessment with reference to the glare impacts from 2 Boulder Close. With reference to the damaged head walls Mr Trevor Harris should be contacted to carry out an inspection of the said head walls."

Recommendation Action: Recognised that the owners of No. 2 Boulder Close have made genuine efforts to address specific drainage deficiencies as required by Council officers. It is recommended that Council officers continue to monitor and work with the owners to ensure that the drainage infrastructure for their major structures and activities are maintained in such a way to minimise any unreasonable stormwater overflows for the adjoining property No. 4 Boulder Close. Further to the above point 2, a separate letter has been sent to the owners of No. 2 Boulder Close, requesting that a 100 mm overflow pipe be installed into the first water storage tank (adjoining the main hot house structure) as well as a connection to the 150mm stormwater pipeline which conveys water to the Kyogle Road table drain. This should eliminate the pressure build up within the water tanks and also minimise the threat of the tanks overflowing and concentrating water flow onto the neighbouring property.

Issue 3 – Traffic safety concerns raised by the owners of No. 4 and 7 Boulder Close in respect of the access to the new fruit and vegetable roadside stall, at the corner of Kyogle Road and Boulder Close.

The traffic safety impacts of this proposed new retail outlet were initially raised by the owners of Nos. 4 and 7 Boulder Close and were assessed to be acceptable by Council officers in the DA approved by Council in early 2009. Whilst it was recognised that this section of Kyogle Road has a relatively high speed limit and an overtaking lane, it was concluded that the expected limited number motorists turning off Kyogle Road into Boulder Close, or turn out of Boulder Close to patronise the road side stall, would minimise the risk of accidents in this location.

The owner of No. 4 Boulder Close has since made a further complaint to Council during the construction of the road side stall, identifying a concern with incidences of vehicles leaving Kyogle Road (coming from Murwillumbah) at relatively high speeds and entering straight into the Boulder Close driveway of the new facility, rather than making a conventional left hand turn into Boulder Close, and then making a right hand turn at lower speed into the relevant driveway. This is claimed to create a traffic hazard for vehicles waiting to turn out of Boulder Close into Kyogle Road.

This matter was referred to Council's Traffic Engineer, who has initially commented:

"The expected traffic generation of the roadside stall is very small (< 20 vehicles per day), however this figure could vary depending on the 'success' of the roadside stall. This amount of traffic does not warrant any intersection treatment as the roadside stall driveway is located over ten metres from the Kyogle Road intersection and is a far more desirable access location than access from Kyogle Road. This is also an existing driveway location, not a new one.

I assume that the issue is one of possible excessive speed of vehicles entering the stall driveway from the auxiliary left turn deceleration lane on Kyogle Road. In this regard I have requested that our speed logger be placed on the auxiliary lane to assess this. Installation of a median may have merit in providing some speed control into the

roadside stall driveway if found to be an issue, however as stated above, the expected vehicle count would not warrant this.”

Traffic monitoring was subsequently conducted, with the following results:

“We have completed a speed and volume traffic survey on the auxiliary left turn deceleration lane on Kyogle Road and found for the week ending 5 June 2009 that:

- 85th percentile speed was 39kph just before the turn into Boulder Close*
- average volume was 40 vehicles per day (which includes property accessing, access to the roadside stall and U-turns)*

Speeds are acceptable and the volume of traffic is very low.”

Recommended Action: That Council officers continue to monitor and respond to any further traffic safety concerns in respect of the proposed roadside stall at No. 2 Boulder Close.

A suggested approach for dealing with the glare issues of the hot house and temporary structures of No. 2 Boulder Close.

The issue of glare impacts arising from the main hot house structures for adjoining owners was investigated in detail in the assessment of the original farm DA, and raised considerable controversy and debate among the community at the time. Council’s approval of this structure was based on the following condition being imposed to reduce the glare impacts on adjoining owners:

- “6. A detailed plan of landscaping providing for a mixture of advanced nursery stock and other trees that provide effective screening is to be submitted and approved by the Director of Environmental Services prior to the issue of a Construction Certificate. The landscaping is to be planted to the satisfaction of the Director of Development Services before the shade cloth is attached to the structures.”*

Whilst a landscaping plan was provided by the owner of No. 2 Boulder Close and signed off by Council staff, it is apparent that this planting regime aimed for a smaller, denser form of vegetation, and did not address the fact that the house and siting of the main complainant against the glare of the main hot house structures, the owner of No. 7 Boulder Close, is located much higher towards the rear of the subject site, and therefore this shorter planting regime does not provide protection from glare.

The owner of No. 7 Boulder Close has made repeated complaints about this glare, and officers have worked with the owner of No. 2 Boulder Close to address this glare issue, without success to date.

I recently visited the site of No. 7 Boulder Close, with the owners present. It was clear to me that, even on a day of variable weather conditions, the complaint of excessive glare from both the original hot house structure, and more recent strawberry patch shading structure, is genuine, and I viewed photos of much worse glare impacts at varying times of sunlight angle.

It is difficult to determine a fair means of re-addressing the glare issue for the original hot house structures, as Council has previously signed off on a landscaping plan which has not been effective in screening the glare. A further attempt for the planting of trees between the common boundary of Nos. 2 and 4 Boulder Close has also failed mainly due to the fact that the plantings have been eaten away by the horses that roam No 4 Boulder Close. However, it is considered that the cumulative impact of the increased glare from the recently erected screen structure (with clear plastic sheeting used at different parts of the day) warrants a broader re-address of the glare issue.

There are 2 main options for re-addressing the glare impacts of the existing main hot house structures, either replacing or painting the existing white canvass material, or providing much higher, mature screening vegetation along the common boundary of Nos. 2 and 4 Boulder Close (a tree height of approximately 20-25 metres would be needed to screen the glare of

views from No. 7 Boulder Close). Both of these options will come at an additional cost to the owners of No. 2 Boulder Close.

The option of either replacing or painting the existing covering of the main hot houses to a less reflective surface is likely to come at a significant cost to the owner of No. 2 Boulder Close, and will be difficult to achieve the right balance of sunlight access for the functioning of the hot houses, which on inspection are currently producing an appropriate temperature level for the growing of vegetable plants.

In terms of fairness, this option is likely to be challenged by the owner of No. 2 Boulder Close, who has pointed out that the glare issue was assessed and approved by Council in the original DA and post DA assessments by Council officers.

The second option of a new planting regime along the common boundary of Nos. 2 and 4 Boulder Close has its complications, mainly arising from the fact that the owners of Nos. 4 and 7 Boulder Close are seeking a shorter term solution to the reduction of the glare. The only possible way this could be achieved in the shorter term would be to require the owner to plant a series of mature trees (up to 20-25 metres in height), to adequately screen the glare of both the hot house structures and new strawberry plantation structure, when viewed from the property of No. 7 Boulder Close. The costs of such trees would be prohibitive, and unreasonable for the owner of No. 2 Boulder Close.

A suggested compromise approach to the planting is to require the owners of No. 2 Boulder Close to plant younger, appropriate species to provide an infill between the existing established trees located on the side of the No. 4 Boulder Close. Guidance on this planting regime could be provided through Council's ecologist, who has recently visited the site and inspected the existing vegetation and soil conditions. Whilst these younger trees will take a number of years to reach maturity, it is considered that it is the most viable and cost effective means for addressing the glare issue.

The owners of No. 2 Boulder Close have recently been receptive to this option, but point out that the previous planting scheme failed due to the horses from No. 4 Boulder Close eating away and destroying the younger plants. I can verify from a recent site inspection that I did witness the horses, reaching over a poorly constructed wire fence and eating existing vegetation on No. 2 Boulder Close.

In the spirit of compromise, it has been suggested that the owners of No. 2 Boulder Close are prepared to meet the costs of the new planting regime, provided that the owners of No.4 Boulder Close would erect a new fence on their property, at a distance of one metre from the common boundary of Nos. 2 and 4 Boulder Close, to prevent the horses from eating away at any new planting regime. This fence would need to be provided along the entire distance of this common boundary.

As highlighted above, Council is seeking a spirit of compromise from each of the three property owners of Nos. 2, 4 and 7 Boulder Close to work towards an equitable resolution of the compliance issues. It would therefore be appreciated if you could provide a written response to the actions recommended in this correspondence.

Yours faithfully

Vince Connell
Director Planning and Regulation

Robyn Sack
4 Boulder Close
Byangum, 2484, NSW
18 July 2009

Lot 11 P2835413
2 Boulder Cl.
Byangum.

LN: 33891

TWEED SHIRE COUNCIL	
FILE No.	DA08/1118 PH
Doc. No.	
REC'D	21 JUL 2009
ASSIGNED TO:	GALE, D.
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Thankyou for your response on 17 June 2009 to issues that had been raised by my husband, Bob Sack and others relating to the property No. 2 Boulder Close, Byangum.

As My husband is currently overseas with his ailing mother, I am responding on his behalf, re his previous concerns and complaints about excess stormwater runoff from hothouse structures at 2 Boulder Close.

I acknowledge that many issues have occurred re this development and acknowledge the lengthy steps Mr Vince Connell has taken to ensure the best result for all parties involved.

Issue 1

We are not affected by the reflectivity issue as the neighbours at 7 Boulder Close but recognize this as a major issue that impacts very negatively on them.

Issue2

we agree with the recommended actions of continued monitoring of drainage infrastructure by council officers to ensure unreasonable stormwater overflows to our property, and for the owners of 2 Boulder Close to install 100mm overflow pipes and the 150mm pipes to convey water to the Kyogle Rd table drain.

I am satisfied that Mr Mitchler has constructed a barrier at the boundary with 4 Boulder Close to prevent sediment and water and products of construction entering my property.

Issue 3

I am not satisfied that the immediate turn into 4 Boulder Close from Kyogle Rd is safe, (at the new fruit stall) especially for cars turning right from Boulder Close onto Kyogle Rd . I recommend a barrier or island to prevent a serious accident occurring here in the future.

I have spoken to Mr Mitchler on 24 June 2009 regarding the recommendations to reduce glare emanated from the "hothouse" structures by him planting screening trees (hopefully mature as recommended) and as previously described in the original DA undertakings.

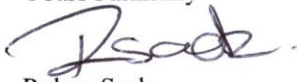
He acknowledged to me 'that he had no problem with our horses and had never had a problem with them allegedly eating his previous plantings.'

As acknowledged we have been able to plant seedlings along this boundary which are now mature trees whilst the horses were on our property at 2 Boulder close. WE lost NO trees due to our horses infact they would weed around the trees. Mr Mit chler did not think that erecting another fence would be needed but I stated we would be happy to place an electric fence along that boundary once he has planted the appropriate trees..

Also I am currently in the process of selling the horses and believe the erection of another fence on my side of the property would be of no use at this time. I DO believe that the current fence needs repair and wire tightening and will address this with MR Mitchler.

I believe that these compromises are real and feasible in providing an equitable solution to the ongoing issues we have dealt with over the years since this development at @ 2 Boulder Close was approved by Council.

Yours Faithfully



Robyn Sack
Bob Sack

28.07.2009

Att: Mr. Vince Connell
Director Planning and Regulation.

from: Avi & Zehavit
2 Boulder Cl. Byangum

Dear Sir,

3382788

In response to your letter dated 17/6/09, and further to our recent meeting, it is with some dismay that we find ourselves again having to reply to the same round of complaints from our neighbours at Nos: 4 and 7 Boulder Close.

Since our first Development Application for the erection of the greenhouses in 2003, we have listened to all the concerns and complaints from these two neighbours, and have worked closely with Council to find resolutions to them. Everything we have done has been with council approval and we have always been willing to make changes, additions and compromises. All we wish for is to live in peace and harmony, to raise our family and conduct our business. It seems however, that even after six years, much debate and many careful decisions, these neighbours remain intent on confrontation. Everything we do is documented, photographed and made the subject of complaint.

While we will always work within a spirit of compromise, and we are willing to consider any achievable proposal to reach an equitable resolution, we can see no similar commitment from our neighbours. Perhaps our neighbours at no: 7 could themselves plant some trees to alleviate their problem and to shelter the structure which, while they have every right to build it, many still consider to be stark, ostentatious and an inappropriate blight on the landscape.

Perhaps also our neighbours at no: 4 could consider re-designing their driveway to allow storm water to follow its natural path, and could limit and control their horses so that the trees are able to grow.

If all parties were to take tangible steps towards compromise, we would find ourselves well on the way to a resolution.

COMPLAINT
LN: 33891

SHIRE COUNCIL	
FILE No.	DA08/1118 PT 1
Doc. No.	
REC'D	31 JUL 2009
ASSIGNED TO:	CONNELL, V
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IMAGE	<input type="checkbox"/>

We thank you for your consideration and look forward to your recommendations.

Rel Doc: 3382788

Hand delivered
received at
Merrumbah
Office 29/7/09.
Vince Connell
Director Planning
and Regulation.

Yours sincerely,
Avi and Zahavit Mishtler

AVI & ZEHAVIT

MaryBeth Harrison

From: Vince Connell
Sent: Friday, 31 July 2009 2:32 PM
To: Records Management Section
Subject: FW: Developments at 2 Boulder Close

Please register in ECM.

Tweed Shire Council
Vince Connell, BTP UNSW
Director Planning and Regulation
Civic & Cultural Centre,
P.O. Box 816, Murwillumbah NSW 2484
Telephone: (02) 6670 2423
Facsimile: (02) 6670 2483
Email: vconnell@tweed.nsw.gov.au
Website: www.tweed.nsw.gov.au

-----Original Message-----

From: Trevor [mailto:trevor.ostrenga@bigpond.com.au]
Sent: Friday, 31 July 2009 2:13 PM
To: Vince Connell
Subject: Developments at 2 Boulder Close, Byangum

Good Afternoon Vince,

Lot 11 DP 835413

LN: 33891

TWEED SHIRE COUNCIL	
FILE No.	DA02/0988 PT-4
Doc. No.	
REC'D	31 JUL 2009
ASSIGNED TO:	CONNELL, V
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IMAGE	<input type="checkbox"/>

Has there been any response from the landowner at No 2 Boulder Close regarding landscaping? Looks like they may be preparing to build more igloos.

Would you please reconsider requiring the landowner to make a development application for the igloo greenhouse structure. Effectively you have suggested to me the igloo is not development. This is incorrect. Whether concrete is used for support or the structure is light weight is not material. The same reasoning applies to a chicken coop or an oversize pergola in a residential zone- no substantial building but the impacts have an effect in the locality, shading, reflectivity, visual amenity etc. The igloo is development. The igloo is a 70m x 5 metre greenhouse structure ie 350sq m + intended for permanent use and is not exempt development as per the Exempt and Complying Development SEPP and Tweeds own DCP. The white shadecloth and plastic is essentially the same covering as the main greenhouses with the same effects. The plastic sides of the main greenhouses are rolled up and down. There is no material difference.

I appreciate your view regarding the necessity of a DA for these, however with due respect, judicial decisions indicate it is not open to you to give informal approval for the igloo structure within the 30m road offset as it is a greenhouse and not exempt development for the reasons I have previously provided. A public officer has no powers to approve or determine an application (verbal or otherwise) unless a statutorily valid application has been accepted and determined in accord with the determination policy and relevant laws by an appropriately delegated officer or authority. The igloo is unlawful and should be removed immediately.

With respect to the fruit stall the landholder has removed vegetation and exposed the entire shop to the Kyogle road traffic and is a distraction as vehicles approach the T intersection at speeds of 100kmh. Your report said the building would be screened by existing vegetation. As I pointed out to council this location was proposed purely for commercial reasons and not for any reasonable planning purpose and now poses an obvious danger to the community. Council has made a poor and dangerous decision in this regard.

Vehicles are driving straight into the open entrance off Kyogle road at speed and this is quite obvious from the wear marks on the double white lines on Boulder Close - an island needs to be placed to prevent this. In any event I am referring the matter to the General Manager of the RTA Road Safety Centre for investigation. Sorry but in my view council and your traffic engineer are not acting in the best interests of the community and are conceding far too much to the landowner.

In addition has the landowner been permitted to build the "fruit stall" not in accord

with the plans which show a 7 metre setback from Kyogle Rd? The entire structure should be 7 m from the fence line but appears to be substantially less than that. Also is the total area of the stall no more than 20 square metres including all storage and facilities? You will be well aware of the caselaw and requirements in this regard and the obligations of the PCA to ensure the structure is built exactly in accord with the approved plans..

The fact is this is not a simple farm fruit stall but has the character of a shop fully powered and even with drink fridges. I also note there has been no trading hours conditions imposed on this shop. The landowners have previously not complied with development approval conditions for their own benefit and in defiance of council and the law. I have major concerns that this shop will be entirely unregulated and used to sell more than just the produce from the property to the detriment of other traders that have much higher costs and compliance requirements.

Irrespective of the issues I have raised with regard to the unlawful igloo development and Fruit Stall would you please advise if the landowners are prepared to provide the landscaping along the eastern boundary as described in our previous correspondence.

And we again thank you for your interest in these matters.

kind regards,

Trevor Ostrenga

Boulder Close.