

TITLE: [PR-CM] Development Application DA10/0066 for a Two (2) Lot Subdivision at Lot 10 DP 1034435, No. 285 Clothiers Creek Road, Nunderi

ORIGIN:

Development Assessment

FILE NO: DA10/0066 Pt1

SUMMARY OF REPORT:

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning, officers have resolved to report this application to full Council. The standard is varied up to 97.3%.

The SEPP No. 1 variation relates to Clause 20(2)(a) of the Tweed Local Environmental Plan 2000 (LEP 2000) which states that consent may only be granted to subdivision of land within Zone 1(b2) if the area of each allotment created is at least 40 hectares. Proposed Lot 12 has a total area of 5.99ha and is inclusive of the totality of 1(b2) zoned land on the subject site (1.08ha). This land is currently located within an 8.55ha allotment (current Lot 10), the majority of which is zoned 1(c). An existing 97.3% variation to the abovementioned development standard currently relates to the site.

The applicant seeks consent for a two (2) lot rural residential subdivision, including an addition to the existing 8m wide Right of Carriageway to provide access to proposed Lot 11.

Concurrence was granted by the Director General in this instance for the following reasons:

- The proposal is consistent with the objectives of the zone; and
- The size of the existing lot is not large enough to maintain agricultural pursuits. The portion of the land affected by the zone 1(b2) is neither altered nor affected by this subdivision proposal.

The proposal was not required to be notified or placed on public exhibition.

It is considered that the application is suitable for approval, subject to conditions.

RECOMMENDATION:

That Development Application DA10/0066 for a two (2) lot subdivision at Lot 10 DP 1034435, No. 285 Clothiers Creek Road, Nunderi be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and

Plan No 17891D Sheet 1 Revision A Ref. No. M30974, prepared by B&P Surveys Consulting Surveyors and dated 6 May 2010

Plan No 17891D Sheet 2 Revision A Ref. No. M30974, prepared by B & P Surveys Consulting Surveyors and dated 6 May 2010,

except where varied by the conditions of this consent.

[[GEN0005]

2. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.

[[GEN0125]

3. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.

[[GEN0135]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

[[PCC0285]

5. The proponent shall submit plans and specifications with an application for construction certificate for the following civil works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils Development Design and Construction specifications.

RURAL ACCESS

- (a) The existing gravel track providing access to the dwelling site on proposed lot 11 shall be upgraded to a 3.0m wide, 150mm compacted gravel pavement with a two(2) coat bitumen seal from the junction with the existing bitumen driveway to the dwelling site on proposed lot 11.

[[PCC0875]

6. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate.

[[PCC0935]

7. Prior to the issue of a Construction Certificate for civil works the following detail in accordance with Councils Development Design and

Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
- (b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
 - earthworks
 - stormwater drainage
 - water supply works
 - Accessway
 - sedimentation and erosion management plans
 - location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure)

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

[[PCC0985]

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

[[PCC1155]

PRIOR TO COMMENCEMENT OF WORK

9. Prior to start of works the PCA is to be provided with a certificate of adequacy of design, signed by a practising Structural Engineer on all proposed retaining walls in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.

[[PCW0745]

DURING CONSTRUCTION

10. All proposed works are to be carried out in accordance with the conditions of development consent, approved construction certificate, drawings and specifications.

[[DUR0005]

11. **Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -**

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[[DUR0205]]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[[DUR0215]]

13. **Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".**

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

[[DUR0795]]

14. **The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.**

[[DUR0815]]

15. **No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.**

[[DUR0985]]

16. **The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.**

[[DUR0995]]

17. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -

- Noise, water or air pollution
- dust during filling operations and also from construction vehicles
- material removed from the site by wind

[[DUR1005]

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

[[DUR1025]

19. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[[DUR1795]

20. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[[DUR1875]

21. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:-

Roadworks

- (a) Final inspections - on maintenance
- (b) Off Maintenance inspection

Water Reticulation, Sewer Reticulation, Drainage

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final inspection - on maintenance

(i) Off maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[[DUR1895]

22. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation/Subdivision Certificate.

[[DUR1955]

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

[[DUR2015]

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

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

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

[[DUR2375]

25. Erosion and sediment control measures shall be placed and maintained to the satisfaction of the General Manager or his delegate.

[[DURNS01]

26. It is a condition of an approval to install, construct or alter a sewage management facility that the facility is not used (or used as altered) until the Council has given the applicant for approval notice in writing that it is satisfied that the facility has been installed, constructed or altered in substantial accordance with the approval.

[[POC1025]

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

[[USE0125]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

28. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[[PSC0005]

Sector10_4

- (b) **Open Space (Casual):**
 1 ET @ \$526 per ET **\$526**
 (\$502 base rate + \$24 indexation)
 S94 Plan No. 5
- (c) **Open Space (Structured):**
 1 ET @ \$602 per ET **\$602**
 (\$575 base rate + \$27 indexation)
 S94 Plan No. 5
- (d) **Shirewide Library Facilities:**
 1 ET @ \$792 per ET **\$792**
 (\$792 base rate + \$0 indexation)
 S94 Plan No. 11
- (e) **Eviron Cemetery:**
 1 ET @ \$120 per ET **\$120**
 (\$101 base rate + \$19 indexation)
 S94 Plan No. 13
- (f) **Extensions to Council Administration Offices
 & Technical Support Facilities**
 1 ET @ \$1759.9 per ET **\$1759.90**
 (\$1759.9 base rate + \$0 indexation)
 S94 Plan No. 18
- (g) **Regional Open Space (Casual)**
 1 ET @ \$1031 per ET **\$1031**
 (\$1031 base rate + \$0 indexation)
 S94 Plan No. 26
- (h) **Regional Open Space (Structured):**
 1 ET @ \$3619 per ET **\$3619**
 (\$3619 base rate + \$0 indexation)
 S94 Plan No. 26

[[PSC0175]

31. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

[[PSC0725]

32. All retaining walls in excess of 1.2m are to be certified by a suitably qualified geotechnical/structural engineer. The certification is to be submitted with the subdivision certificate application and shall state that the retaining walls have been designed and constructed in accordance with AS4678-2002 Earth Retaining Structures and are structurally sound.

In addition to the above certification, the following is to be included in the Section 88B Instrument to accompany the final plan of subdivision.

- (a) A restriction to user for each lot that has the benefit of a retaining wall that prevents any cut or fill greater than 0.3m in vertical height within a zone adjacent to the wall that is equal to the height of the wall.
- (b) Each lot burdened and or benefited by a Type 1 wall as defined in AS4678-2002 Earth Retaining Structures, shall contain a restriction to user advising the landowner of the need to maintain the wall in accordance with that standard.

Tweed Shire Council is to be nominated as the authority empowered to release, vary or modify the restrictions.

[[PSC0785]]

33. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.

[[PSC0825]]

34. Submit to Council's property officer an appropriate plan indicating the rural address number to both new and existing lots for approval. Prior to the issue of a Subdivision Certificate, each lot shall have its' rural address number displayed in accordance with Council's "Rural Addressing Policy".

[[PSC0845]]

35. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[[PSC0885]]

36. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-

- (a) Compliance Certificate - Water Reticulation

Note:

1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.
2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[[PSC0915]

37. Prior to the issue of a Subdivision Certificate, a properly dimensioned plan shall be lodged with Council showing the relative position of existing fences, road formation and boundaries. Any encroaching road boundary fence is to be relocated to the correct alignment prior to issuing a Subdivision Certificate. Any road widening deemed necessary following submission of the plan shall be dedicated at no cost to Council.

[[PSC0945]

38. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply at the front boundary of the allotment has been completed.

[[PSC1165]

39. The production of written evidence from the local electricity supply authority certifying that the reticulation of overhead electricity (rural subdivisions) and energising has been provided to a point no less than 45 metres from the front boundary of each allotment.

Should any electrical supply authority infrastructure (sub-stations, switching stations, cabling etc) be required to be located on Council land (existing or future), then Council is to be included in all negotiations. Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands.

Compensatory measures may be pursued by the General Manager or his delegate for any significant effect on Public Reserves or Drainage Reserves.

[[PSC1175]

40. Prior to the issue of the subdivision certificate the applicant shall obtain from Council approval to operate the existing on-site sewage management system servicing the dwelling on proposed lot 12 under Section 68 of the Local Government Act 1993.

[[PSCNS01]

GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997

1. Landscaping surrounding the existing dwelling is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

REPORT:

Applicant: Mr J Parsons
Owner: Mr J Parsons and Mrs SM Parsons
Location: Lot 10 DP 1034435, No. 285 Clothiers Creek Road, Nunderi
Zoning: 1(b2) Agricultural Protection, 1(c) Rural Living
Cost: \$50,000

BACKGROUND:History

Current Lot 10 in DP 1034435 was created in 2001 following approval of K99/1284, a two-lot rural residential subdivision of Lot 8 in DP 803002 (10.02ha), on 28 January 2000. Lot 9 in DP 1034435 was also created, which is a 1.468ha parcel with a narrow frontage to Clothiers Creek Road with a Right of Carriageway over Lot 10 for means of access and water supply. Lot 8 was inclusive of the minor portion of land currently zoned 1(b2).

Lot 8 in DP 803002 was created in 1990 following approval of subdivision 80/90. This subdivision was a rearrangement of two allotments, Lot 13 in DP 567949 (14.97ha) and Lot 6 in DP 773854 (37.86ha), both of which had frontage to Eviron Road to the north. The subject site was contained within the southern portion of the latter parcel. It was at this stage that the basic shape of the allotment was created to contain a minor portion of 1(b2) zoned land.

Aerial imagery indicates that the basic shape of the subject site was created originally to cater for a small pocket of vegetation located in the north-eastern corner. It was not possible historically to use this land for agricultural purposes and the subsequent shape of the allotment through the subdivision history reflects this. This can be verified through aerial imagery dating back to 1962.

Structures on the subject site are lawful:

- D90/0097: erection of a private dwelling
- 0637/90B: swimming pool.

The Subject Site

The subject property is legally described as Lot 10 DP 1034435 and is more commonly known as 285 Clothiers Creek Road, Nunderi. The property has an area of 8.552 hectares and contains an existing residential dwelling, swimming pool and various farm sheds and improvements. Vehicular access to the site is provided by way of an existing bitumen driveway from Clothiers Creek Road. The property is irregular in shape being defined by an access handle fronting the road.

The site is generally clear of vegetation other than a remnant pocket of bushland in the north east corner of the site. Scattered vegetation is also found on adjoining properties, whilst the land to the north is utilised for the growing of sugar cane.

A dam is located centrally along the northern boundary of the existing allotment.

An existing 3m wide easement for water supply is located adjacent the existing bitumen driveway and benefits Lot 9 in DP 1034435. An existing 8m wide and variable width Right of Carriageway is located generally over part of the existing bitumen driveway and is for the purpose of gaining vehicular access to Lot 9 in DP 1034435.

There is a Restriction to User that burdens all allotments within DP 1034435. Terms of the restriction relate to satisfactory On-Site Sewer Management Systems, driveway configurations and water storage facilities.

The Proposed Development

The applicant seeks consent for a two (2) lot rural residential subdivision, including an addition to the existing 8m wide Right of Carriageway to provide access to proposed Lot 11. Land areas of the proposed lots are as follows:

- Lot 11 = 2.56ha
- Lot 12 = 5.99ha (retention of existing dwelling)

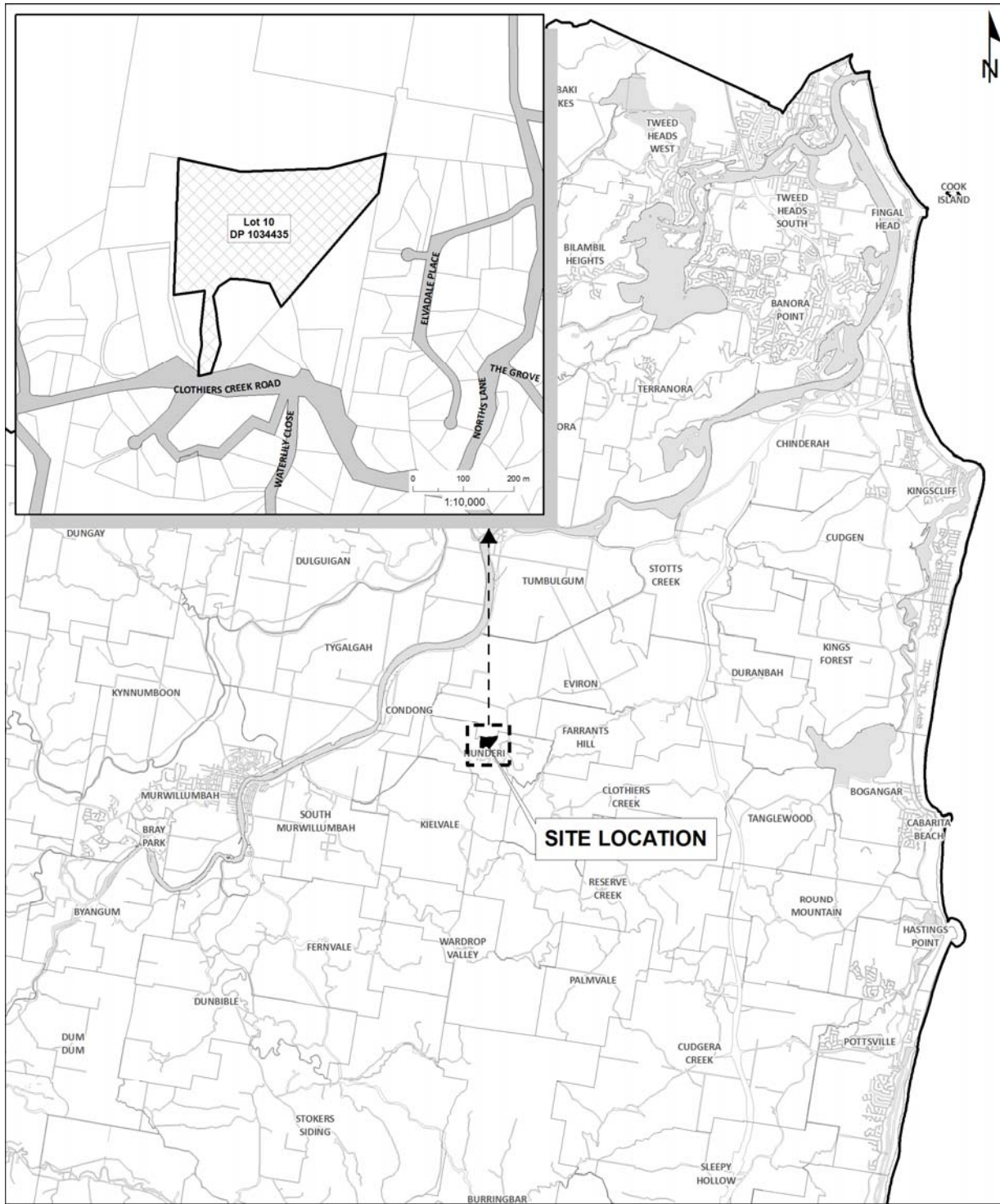
The proposal includes:

- Subdivision of the site into 2 residential lots (Torrens Title)
- Additional provision of Right of Carriageway over the existing bitumen driveway to benefit proposed Lot 11
- Nomination of a suitable dwelling site for proposed Lot 11.

Summary

Having regard to the site's characteristics, the site history, intended use, proximity of surrounding rural residential and agricultural development, amenity issues and an assessment against SEPP 1 and Clause 20(2)(a) of the Tweed LEP 2000 in particular, the proposed two (2) lot subdivision is, on balance, considered suitable for the location and therefore the proposed development is recommended for approval.

SITE DIAGRAM:



LOCALITY PLAN
 Lot 10 DP 1034435
 No. 285 Clothiers Creek Road, Nunderi

Filename: z:\esri\planning\mxd\A4P_B&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 24 June, 2010

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Cadastre: 25 June, 2010
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Coordinate System - MGA Zone 56
 Datum - GDA 94

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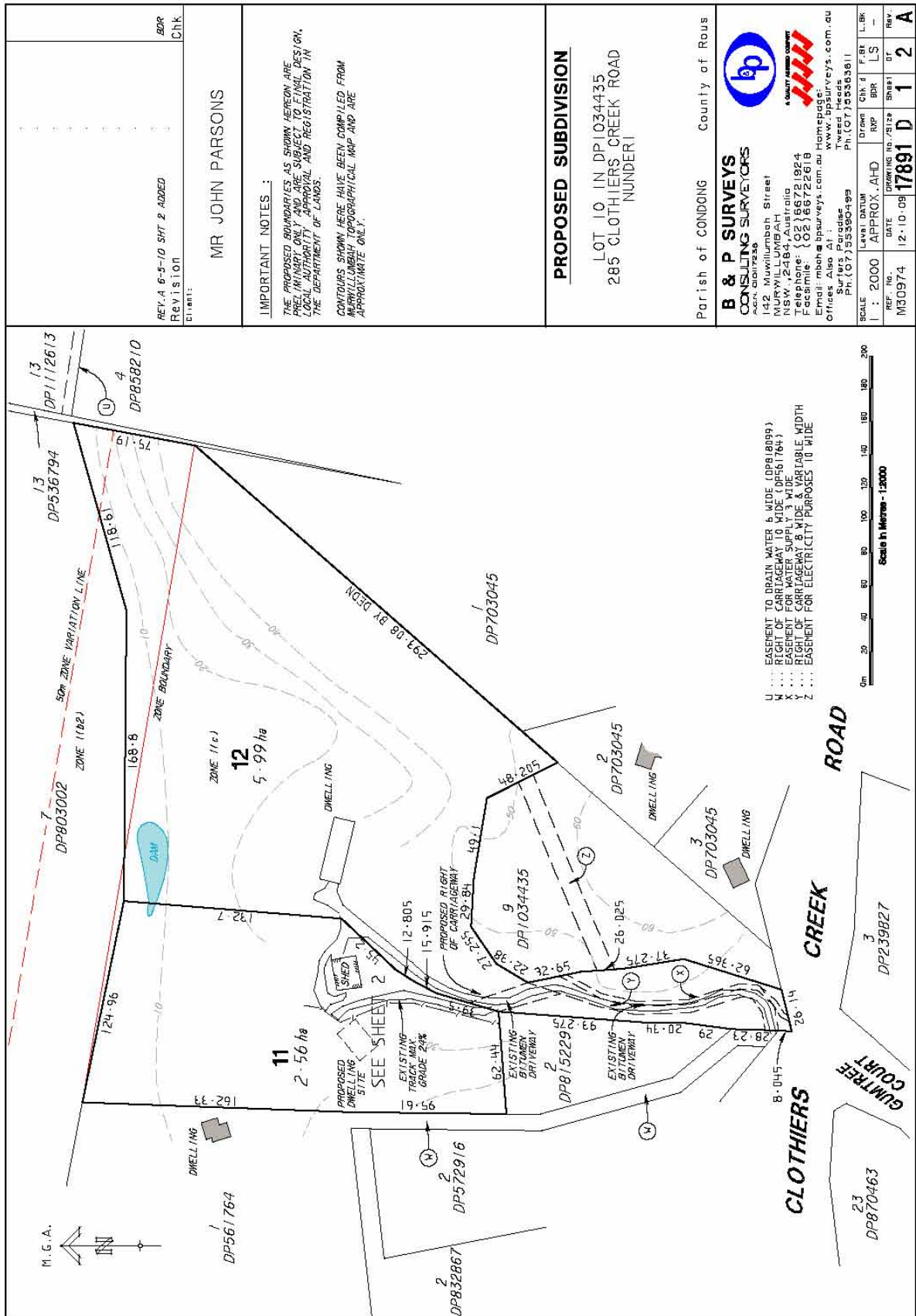
Civic and Cultural Centre
 3 Tumbulgum Road
 Murwillumbah NSW 2484
 PO Box 816
 Murwillumbah NSW 2484

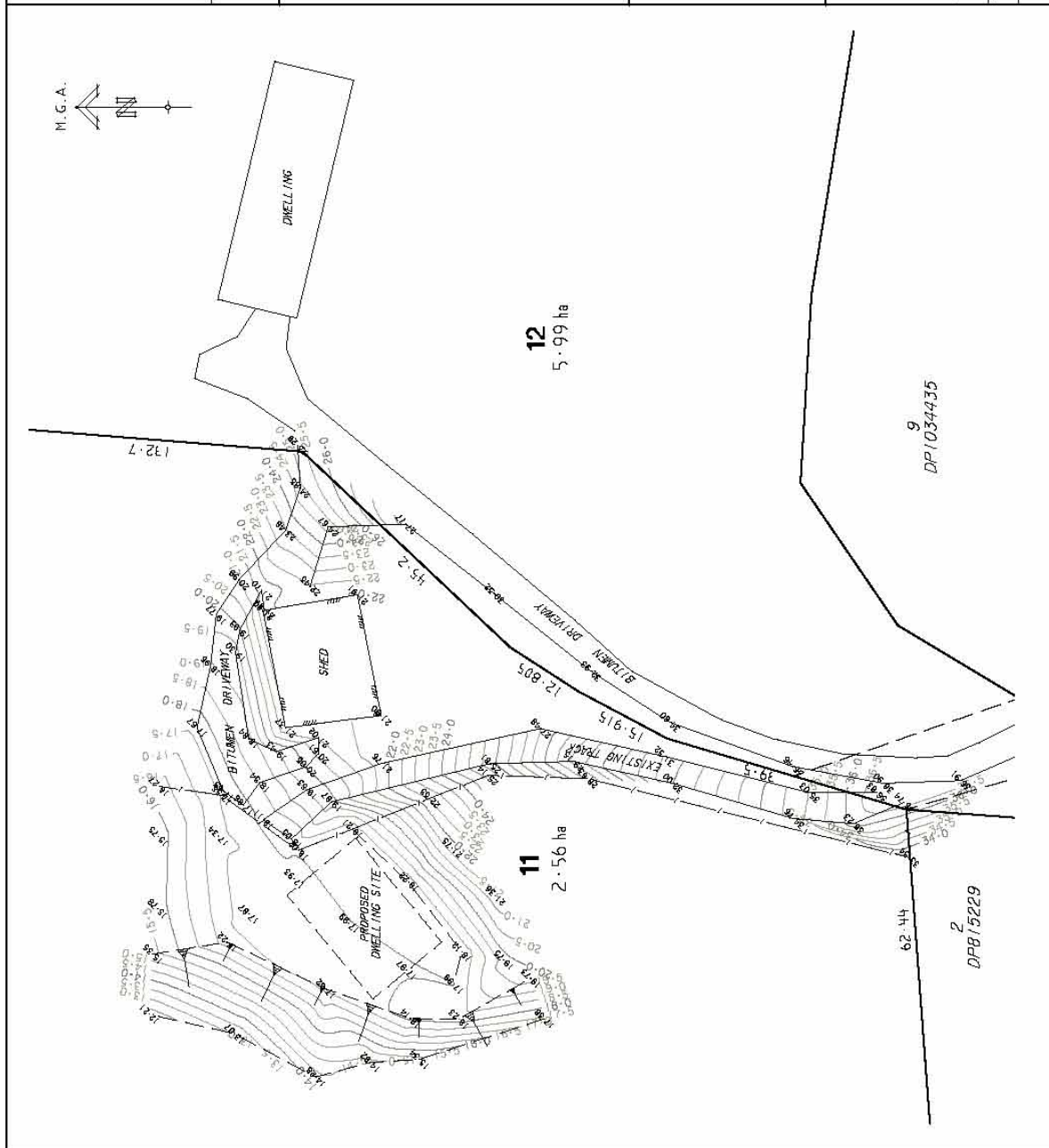
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 E: planningreforms@tweed.nsw.gov.au




TWEED
 SHIRE COUNCIL

DEVELOPMENT PLANS:





REV. A 6-5-10 SHT 2 ADDED REVISION CLIENT:	1 2 3 4 5 6 7 8 9 10	BOR CHK			
MR JOHN PARSONS					
IMPORTANT NOTES : THE PROPOSED BOUNDARIES AS SHOWN HEREON ARE SUBJECT TO THE FINAL SURVEY DESIGN, LOCAL GOVERNMENT APPROVAL AND REGISTRATION IN THE DEPARTMENT OF LANDS. DATE OF SURVEY - 5-5-10 CONTOUR INTERVAL 0.5M.					
PROPOSED SUBDIVISION LOT 10 IN DP1034435 285 CLOTHIERS CREEK ROAD (NUMBER)					
Parish of CONDONG County of Rous					
					
B & P SURVEYS CONSULTING SURVEYORS 142 Muwillumbah Street MURWILLUMBAH NSW 2471 Telephone: (02) 66721924 Facsimile: (02) 66722618 Email: mb@bpsurveys.com.au Homepage: www.bpsurveys.com.au Offices Also At : Surfers Paradise Queensland Ph: (07) 55560499					
SCALE	Level datum	Drawn	Chk'd	F.B.T.	L.B.R.
1 : 600	APPROX. AHD	ROP	BBR	LS	-
REF. NO. M30974	DATE 12-10-09	DRAWING NO./REV 17891 D	SHEET OF 2	REV. 2	REV. A

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

Clause 4 - Aims of the Plan

The proposal is consistent with the aims of the Tweed Local Environmental Plan 2000 (TLEP). The proposal represents sustainable economic development which is consistent with the area's environmental and residential amenity qualities.

Clause 5 - Ecologically Sustainable Development

The proposal is consistent with the principles of ecologically sustainable development. The carrying out of the development will not result in unacceptable cumulative impacts.

Clause 8 - Zone objectives

The site is zoned 1(c) Rural Living & 1(b2) Agricultural Protection as per the Tweed LEP 2000.

1(c) Rural Living Zone

Primary objectives of the 1(c) Rural Living zone relate to the enabling of rural residential development which does not compromise rural activities within the vicinity, detract from rural amenity or place unreasonable demands for the extension of public amenities or services. They also permit quality rural residential development that makes a positive contribution to existing local rural character.

The secondary object of the zone enables other development that is compatible with rural residential development.

The proposed subdivision is consistent with the applicable primary objectives of the zone in that it represents quality rural residential development of appropriate scale and character to that of the locality. It will not result in a burden on public amenities or services.

Dwelling houses not connected to Council's reticulated sewerage system are permissible if they are located on allotments with a minimum area of one (1) hectare (refer Clause 21 of the Tweed LEP 2000). The proposed lots, at 2.56ha and 5.99ha meet the minimum requirement of one (1) hectare.

1(b2) Agricultural Protection Zone

The primary objective of the 1(b2) Agricultural Protection Zone relates to the protection of identified prime agricultural land from fragmentation and the economic pressure of competing land uses.

The secondary objective allows other development that is compatible with agricultural activities.

Dwelling houses are permissible with consent on an allotment of at least 40 hectares. This is discussed in detail below in this report in relation to the SEPP 1 variation to development standards.

In any case, the proposed subdivision does not alter the original zoning configuration of the subject site and does not impact upon the historical and continuing use of the 1.08ha portion of land zoned 1(b2) for purposes other than agricultural activity. The land is vegetated and used as open space in association with existing rural residential development. This land use is considered compatible with the zone objectives.

Clause 15 - Essential Services

Council's reticulated potable water supply is available to the area. A water reticulation service exists for the dwelling in existing Lot 10 (proposed Lot 12). This will be maintained.

Recommended conditions of consent shall require the provision of service for proposed Lot 11 from Clothiers Creek Road to the proposed Lot 11 frontage in accordance with Council's standards.

Council's piped effluent disposal infrastructure is not available within the area.

Electricity services are currently provided to the area via Country Energy infrastructure. Telecommunications services are currently provided to the area via Telstra Infrastructure.

Clause 16 - Height of Building

There are no buildings proposed as part of the development application.

Clause 17 - Social Impact Assessment

The scale of this development proposal does not necessitate a social impact assessment.

Clause 35 - Acid Sulfate Soils

Council's Enlighten indicates that the site is generally covered by Class 5 Acid Sulfate Soils. There are a couple of small areas along the northern boundary that exhibit Class 2 soils. However, it is not envisaged that any earthworks will be required in these locations and the ground will remain undisturbed.

Other Specific Clauses

Clause 34 – Flooding

Council's Enlighten indicates that a section of the existing allotment is flood liable with a Design Flood Level of RL 4.5m AHD. This flood liable area is situated away from the proposed dwelling footprint on proposed Lot 11 and the existing dwelling on proposed Lot 12.

Specific Clauses

Clause 19 – Subdivision (General)

This clause allows subdivision to take place on the subject land with development consent.

Clause 20 – Subdivision in Zones 1(a), 1(b), 7(a), 7(d) and 7(l)

The main objective of this clause is to prevent the potential for fragmentation of rural land that would lead to an adverse impact upon its agricultural and/or environmental character. It is also to prevent unsustainable development and to protect the area of Tweed's water supply quality.

Clause 20 provides for the subdivision in 1(b2) zoned land if the area of each allotment created is at least 40 hectares. This application proposes to maintain the same 1.08ha area of 1(b2) zoned land (along with 4.91ha of 1(c) zoned land) within a parcel with a total land area of 5.99ha.

There is no change to the land zoned 1(b2). The land will be included in the proposed lot for the existing dwelling. No development is proposed on the land zoned 1(b2). It is therefore the subject of a SEPP 1 Variation Report which has received the concurrence of the Director General and is discussed in full at a later stage within this report.

Clause 21 – Subdivision in Zone 1(c)

The objective of Clause 21 is to ensure that the semi-rural character and environmental values of the locality are protected.

The proposal is in accordance with Clause 21 as each of the proposed lots which are not connected to the Council's reticulated sewerage system, have an area not less than 1ha. A tank water supply is nominated for use in association with the existing dwelling and will be required to be provided for any future dwellings.

Existing areas for on-site treatment and disposal of sewage in association with the existing dwelling have been reviewed and assessed as acceptable by the Environmental Health Unit.

Clause 22 – Development near Designated Roads

Clothiers Creek Road is a Council Designated Road. The objectives of this clause are to protect and improve the operation of designated roads and

prevent development being unsuitably located near a noisy designated road, or prevent development spoiling the scenic attractiveness of such a road.

Access to the subject site is from Clothiers Creek Road. However, this access is by way of a driveway only. The site does not have useful frontage to the designated road. Access will not be changed as a part of this application and it is not possible to locate dwellings any closer than 250m from this road.

Therefore, the objectives of this clause are considered to be satisfied.

Clause 24 – Setbacks to Designated Roads

As discussed above, the existing and proposed dwelling associated with the subdivision are located no closer than 250m from the designated road. This complies generously with the desired 30m setback set out in this clause.

Clause 39A – Bushfire Protection

The objective of Clause 39A is:

- to minimize bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

The development application was forwarded to the NSW Rural Fire Service on 24 February 2010 for consideration and comment, as the subject site is bushfire prone land. A response was received 30 March 2010. The Service recommended a condition be attached to the development consent, should it be granted.

The condition relates to Landscaping.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

This clause states that council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land.

The history of the use of the site for the past 50 years indicates that of dairy farming and residential use. The small parcel of land zoned 1(b2) Agricultural Protection has not been farmed, as indicated in aerial photography dating back to 1962.

Adjoining and surrounding land is utilised for rural residential and cane farming purposes.

The development would not lead to a loss of prime crop and pasture land, or adversely impact upon any nearby agricultural activities.

Clause 43: Residential development

Clause 43 of the North Coast Regional Environmental Plan 1988 (NCREP) provides guidelines for Council when considering residential development. These controls include density, site erosion and environmental constraints on the land.

Site erosion will be minimised as there are no works proposed. The density of the proposed development has been maximised without adversely affecting the environmental features of the land.

SEPP No. 1 - Development Standards

As discussed, the applicant seeks to vary the development standard regarding minimum allotment size in the 1(b2) zone for subdivision purposes as contained within Clause 20(2)(a) of the Tweed LEP 2000.

Clause 20(2) of the Tweed LEP 2000 states that:

Consent may only be granted to the subdivision of land:

- (a) within Zone 1(a), 1(b2), 7(a), 7(d), or 7(l) if the area of each allotment created is at least 40 hectares.*

The applicant contends that *the land is not altered or affected by this proposed subdivision.*

A SEPP No. 1 submission may be supported where the applicant demonstrates that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specifies the grounds of that objection. The applicant must also demonstrate the consistency with the aims of the SEPP.

In support of the proposed variation, the applicant has provided the following:

“With reference to provisions of State Environmental Planning Policy No. 1 – Development Standards, we advise that a minor portion of subject land, located in the north-eastern corner is currently zoned 1(b2) Agricultural Protection. This land is not altered or affected by this proposed subdivision. We advise that this area of subject land is currently not, nor has been, used for agricultural purposes. The existing land form, land ownership and vegetation does not lend itself towards these uses.

The remainder of subject land is zoned 1(c) Rural Living, which is consistent with the character and focus of the lands to the east, west and south of the subject land. As such, we consider the proposed

development is consistent with the planning objectives and criteria of this locality.

Due to the minor portion of subject land in the north-eastern corner being zoned 1(b2) Agricultural Protection, it is necessary to obtain flexibility in the application of planning controls operating over this said portion of land.

We note that the minimum lot size for land within zone 1(b2) Agricultural Protection is 40ha. The standard is considered unreasonable and unnecessary due to the following points:

- *subject land has always been less than 40ha*
- *the minor portion of subject land affected by zone 1(b2) Agricultural Protection is neither altered or affected by this subdivision proposal*
- *the existing topography, land uses and existing vegetation is not considered consistent with agricultural use."*

Assessment of the applicant's submission:

The following assessment of the SEPP No. 1 is based on the principles set by Chief Justice Preston (*Wehbe v Pittwater Council [2007] NSW LEC 827*).

1. The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Chief Justice Preston has noted 5 ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. In this instance, the first option, being the objectives of the standard are achieved notwithstanding non-compliance with the standard has been adopted.

The objective of Clause 20(2)(a) of the Tweed LEP is achieved despite the variation to the development standard pertaining to minimum allotment size. The objectives of this clause ensure there are no detrimental impacts to the ecological or scenic values of the land and prevent further fragmentation.

The proposed subdivision is minor and is consistent with surrounding development. It does not compromising the ecological or scenic value of the subject site.

The applicant's submission in relation to being well founded is supported.

2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*; and

The objects specified within Section 5(a)(i) and (ii) relate to the promotion and co-ordination of the orderly and economic use and development of land, and the protection, provision and co-ordination of communication and utility services.

The proposal provides for a Torrens Title subdivision that incorporates one new allotment and no unreasonable burden on public infrastructure.

It is not considered that the granting of this application would hinder the attainment of such objectives.

3. It is also important to consider:

- a. whether non-compliance with the development standard raises any matter of significance for State or regional planning; and**
- b. the public benefit of maintaining the planning controls adopted by the environmental planning instrument.**

The proposed non-compliance with Clause 20(2)(a) of the Tweed LEP 2000 is not considered to raise any matter of significance for State or regional planning.

No public benefit issues are adversely affected by not being able to maintain the development standard in this case as it is already non-compliant and the degree of non-compliance will not intensify.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with the Tweed LEP 2000 is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it is localised. As such, the granting of this application is unlikely to impact upon public benefit.

As stated previously in this report, concurrence was granted in this instance by the Director General for the following reasons:

- The proposal is consistent with the objectives of the zone; and
- The size of the existing lot is not large enough to maintain agricultural pursuits. The portion of the land affected by the zone 1(b2) is neither altered nor affected by this subdivision proposal.

SEPP (Rural Lands) 2008

This SEPP introduces rural planning principles to facilitate the orderly and economic use and development of rural lands for rural and related purposes. It provides controls for rural subdivisions and identifies State significant agricultural land. It also implements measures designed to reduce land use conflicts.

None of the provisions contained within the SEPP relate specifically to this site. The land is not considered State significant agricultural land. Measures designed to reduce land use conflicts are aimed at creation of residential land uses through subdivision on land that is adjacent existing farming activities, which does not apply to this development.

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

The shire-wide Draft Local Environmental Plan was recently placed on exhibition. The draft zones are R5 Large Lot Residential and RU1 Primary Production. The proposed subdivision includes a minor 1.08ha portion of land draft zoned RU1 that will not be affected by the proposal. Minimum allotment sizes for the draft zones are as follows:

- 1ha for R5
- 40ha for RU1.

This is consistent with current zoning provisions. Objectives for both zones are also consistent with current zoning provisions.

Dwelling houses are permissible forms of development in both draft zones. A 'dwelling house' is a form of 'Residential' development'.

Land Use Controls:

R5

3 Permitted with consent

Bed and Breakfast Accommodation; Dual Occupancy (attached); Dwelling houses; Home Industry; Roadside Stalls;
Any other development not specified in item 2 or 4

RU1

3 Permitted with consent

Agricultural Produce Industries; Animal Boarding or Training Establishment; Aquaculture; Bed and Breakfast Accommodation; Biosolid waste applications; Boat Sheds; Cellar Door Premises; Dual Occupancies (attached); Dwelling houses; Extractive Industries; Farm Buildings; Farm Stay Accommodation; Flood Mitigation Works; Forestry; Helipads; Home Based Child Care; Home Businesses; Home Industries; Intensive Livestock Agriculture; Mining; Roadside Stalls; Rural Worker's Dwellings; Turf Farming; Water Recreation Structures; Water Storage Facilities.

Any other development not specified in item 2 or 4

Clause 4.6 (6) states that consent must not be granted under this clause for a subdivision of land in Zone RU1 if:

- a. The subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- b. The subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

In the case of this subdivision proposal, the development standard is varied considerably which would require the applicant to justify the contravention of the development standard and for concurrence of the Director-General to be obtained by the consent authority.

This is a similar process to that which is conducted under SEPP 1, which has been discussed above in this report.

It is therefore concluded that the subdivision proposal may be assessed as a form of development that would be considered favourably under the draft zoning provisions.

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

Tweed Development Control Plan

A3-Development of Flood Liable Land

Council's Enlighten indicates that a section of the existing allotment is flood liable with a Design Flood Level of RL 4.5m AHD. This flood liable area is situated away from the proposed dwelling footprint on proposed Lot 11 and the existing dwelling on proposed Lot 12.

A5-Subdivision Manual

DCP A5 provides various guidelines for the subdivision of land and aims to facilitate "best practice" subdivision development in line with the policies of Council and the State. The DCP defines "subdivision" liberally as "the division of land into two or more parts" and includes the creation of lots in community title subdivisions. Parts of this DCP that are applicable to the proposal have been addressed below with the conclusion that subject to various conditions attached to this report the application is compliant with the provisions of this part of the DCP.

A5.5.2 Physical Constraints

The rural subdivision proposal is consistent with the surrounding neighbourhood and utilises the existing rural layout and topographical features.

The existing and proposed dwelling sites for this proposed subdivision are both located above acceptable 2009 flood levels. Filling land on a floodplain does not form part of this application. The dwelling sites are not located within any natural water course or drainage system.

The proposed subdivision will not involve the clearing of any vegetation. It integrates with the surrounding rural environment and compliments existing scenic rural landscapes. The proposed dwelling site and additional access for Lot 11 is considered to be sensitive to the visual amenity of the site and as such is deemed not to detract from the scenic quality or view corridors of the surrounding neighbourhood.

A5.5.3 Rural Water Courses & Drainage

The subject land is traversed by natural gullies and water courses. The proposal will not change or affect the natural flow paths.

A5.5.4 Rural Subdivision Structure

The proposed subdivision is consistent with the zone objectives and is consistent with the existing rural character and amenity of the adjoining rural neighbourhood to the east, west and south of the subject land. The proposed subdivision is not an isolated rural development and is not anticipated to provide an unsustainable demand on public amenities and services.

A5.5.5 Rural Subdivision and Lot Layout

The position of the proposed new lots was determined taking into consideration the topography, position of existing structures, the landscape and visual character and the environmental values of the locality. The proposed lots comply with the minimum lot sizes outlined in Clause 21(2) of the TLEP 2000 for the subdivision of land zoned 1(c).

A5.5.6 Rural Movement Network

The subject land gains access from Clothiers Creek Road via an existing bitumen driveway. A Right of Carriageway will be provided over the existing bitumen driveway which will benefit proposed Lot 11 and the width of such will comply with the minimum standards as per the DCP. A total of three allotments will share this existing driveway, which is acceptable to the requirements. The proposed subdivision will not affect the existing situation regarding the traffic volumes and the like.

On-site sewer management will be carried out in accordance with the necessary environmental and health protection guidelines and proposed Lots 11 and 12 will be connected to the public reticulated water supply, which enters the site off Clothiers Creek Road.

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

Clause 92(a) Government Coastal Policy

The subject land is not affected by the coastal policy.

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

Access, Transport and Traffic

The proposed two-lot subdivision has frontage to Clothiers Creek Road which is an asphalt sealed road pavement in excellent condition. The horizontal, vertical alignments and cross section profile are considered satisfactory.

Adequate site distance exists at the intersection of Clothiers Creek Road.

A public transport system currently services Clothiers Creek Road and the Nunderi area. This is accessible to the proposed development.

Access to proposed Lots 11 and 12 will be via the existing 'Right of Carriageway' laneway from Clothiers Creek Road which is contained within existing Lot 10 DP 1034435 and serves existing Lot 9 DP 1034435. The existing laneway is bitumen sealed and in good condition.

Currently no footpaths are constructed in Clothiers Creek Road. Adequate parking and manoeuvring is available to each proposed allotment.

The proposed development will not generate any significant additional traffic to the Clothiers Creek Road and Nunderi area. However, the road network in the area has sufficient capacity to cater for any additional traffic.

(c) Suitability of the site for the development

Surrounding Land Uses / Development

The property is generally surrounded by rural residential development to the east, south and west but overlooks the extensive cane field system of the Tweed Valley to the north.

Amenity

The proposed dwelling site is setback approximately 150m from the boundary with adjacent cane growing activities. It is noted that the existing dwelling on Lot 10 is located closer than the proposed dwelling. Further, another dwelling exists on the adjacent Lot 1 DP 561764 about 50m from the boundary.

The proposed 150m setback is considered reasonable to minimise the potential for cane farming practices to impact upon further residents.

Flora and Fauna

The main vegetation affecting the property is located in the north east corner of the site and to a lesser extent on the property to the west. The majority of the property is clear of any bushland and is utilised in part for intermittent grazing of livestock.

Topography

The property is situated on the northern side of a small hill in Nunderi and has elevated views overlooking the cane fields of the Tweed Valley to the north.

The subject site is a combination of flat, gentle and moderately sloping land. The land slopes up initially from the formed Clothiers Creek Road frontage then slopes down in a gentle manner to the rear.

Site Orientation

Views from the existing dwelling and proposed dwelling sites are in a north and north-west direction across the existing adjoining agricultural lands. The proposed dwelling site for Lot 11 will not visually impede the existing dwelling or adjoining dwelling's view corridors.

Effluent Disposal

An On-Site Sewage Management Design Report was submitted. The report assesses the treatment system associated with the existing dwelling and provides design detail for a new system for the proposed dwelling.

It is considered that the on-site sewage treatment and disposal method as detailed in the Design Report including all recommendations of the report is sufficient to attain an acceptable level of environmental impact within the allotment boundaries as assessed in accordance with AS1547/2000.

Contaminated Land

Application documentation states that the 'subject land is currently not, nor has been, used for agricultural purposes'.

The current Lot 10 was created by a previous subdivision and notes on the file indicate that a letter was provided to Council which confirmed that the property was used for dairying for the previous 50 years.

This information remains relevant and no further information was sought in support of the application.

Stormwater Drainage

The proposed lots have sufficient grades to convey stormwater to the existing watercourses within the respective proposed allotments. Proposed Lot 11 will discharge to the existing gully / watercourse to the west of the proposed dwelling footprint and proposed Lot 12 will continue to discharge stormwater as per the existing stormwater discharge arrangement.

Small watercourses on the site discharge to dams located at the northern boundary of the existing allotment. On-site detention is not required and stormwater will be directed to the existing watercourses / gullies.

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

The application was not required to be notified but was referred, as integrated development to NSW Rural Fire Service for comment. One condition in relation to landscaping was imposed.

(e) Public interest

The proposed development is generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan. The development is considered to be in the interest of the general public.

OPTIONS:

1. Approve the development application with conditions; or
2. Refuse the development application with reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the option to appeal the matter in the Land and Environment Court should they be dissatisfied with Council's resolution.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed two (2) lot subdivision is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts. It is considered the site is suitable for the development.

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.
