

Thursday 18 March 2010

To: Rowena Michel – Coordinator Development Assessment
From: Colleen Forbes
Subject: Development Application DA06/0897.01 - amendment to Development Consent DA06/0897 for a nine (9) lot subdivision, alterations to the approved lot sizes, realignment of the road and the staging of the development into two (2) stages at Lot 1 DP 601049 Clothiers Creek Road; Lot 1 DP 1084992 No. 15 Tanglewood Drive, Tanglewood
Reference: DA06/0897.01

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[DAMemo]

BACKGROUND

The subject land has a long and complex history. Of particular note is the previous legal action between the respective owners of the subject land (Lot 1 DP 1084992) and the adjoining property to the south (Lot 1 DP 601049) in relation to access provision.

The dispute related to Development Consent 1038/2000DA for the southern five (5) lot subdivision of Lot 1 DP 601049. Under the conditions of that development consent, the subdivision could not be commenced until a 'proposed' right of way was formally registered on the title. This resulted in applications being lodged with Council for a boundary adjustment between proposed Lots A and B (DA06/0832) and this nine (9) lot subdivision, as a result of negotiations on this issue. Council has since signed off on the registration of the right of way, thereby activating the consent for the five (5) lot subdivision of Lot 1 DP 601049 (proposed Lot B under DA06/0832).

On 24 August 2007, development consent (DA06/0897) was granted for a nine (9) lot subdivision (of proposed Lot A under DA06/0832). The approval incorporated a formal access road (servicing each of the proposed allotments for services including power and telecommunications). The road, which terminates at the eastern boundary (between Lots 6 and 7) was also intended to provide formalised access to the approved five (5) lot subdivision on the adjoining land (Lot 1 DP 601049) to the south (see figure 1 below) via the existing Crown Road.

The main issue for consideration (under the original approval) appears to relate to the conservation/habitat value of the site. Of particular importance was the question of whether or not unauthorised clearing and other alleged pre-emptive activities were undertaken to avoid environmental constraints that may have otherwise limited the development potential of the land. Council's Specialist Planner / Ecologist's flora and fauna assessments noted that the site provided habitat for threatened species, including the Glossy Black Cockatoo and Koala.

The file records note that Council was unable to find sufficient evidence of any recent vegetation clearing on the subject land, despite a comparison of aerial photographs of the property showing a distinct reduction in vegetation coverage between 2000, 2001 and 2006.

The outcome was that approval was granted, subject to rehabilitation works outside of the nominated asset protection areas, as well as a koala habitat Plan of Management. The applicant submitted a Rehabilitation Management Plan (as part of the Construction Certificate process), which not considered to be satisfactory. As such, the construction certificate has not been released for this development until the S96 application has been favourable determined.

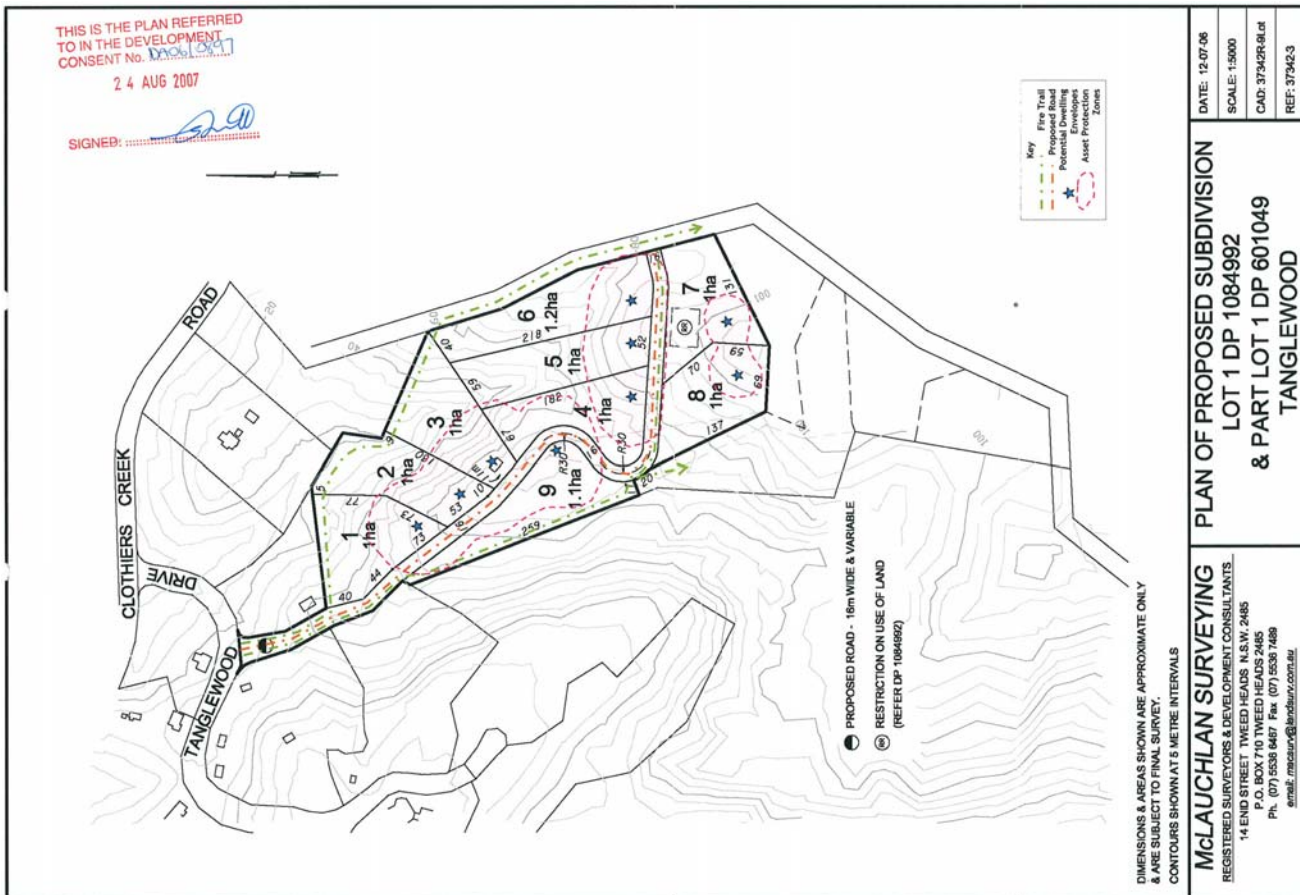


Figure 1 – approved plan of subdivision (DA06/0897)

In 2009 a draft council report was formulated, using aerial photographic evidence to indicate that extensive clearing had been undertaken on the subject site - Lot 1 DP 1084992 (and to a lesser extent neighbouring Lot 1 DP 601049 now under the same ownership) at 15 Tanglewood Drive Tanglewood between 2004 and 2007 (see figure 2 below).

The report recommended options such as: commencing legal proceedings relating to non-compliance with consent conditions and construction of a dwelling without consent; investigating joint action with the Department of Environment and Climate Change; or failing legal action, Council could negotiate a significant restoration plan and program with the owners to restore the remnant vegetation on the site.

On 10 July 2009, the draft report was sent to the applicant seeking their response, comment or clarification of the issues raised within the report to ensure factual information prior to its consideration by Council.

The applicant failed to respond to the issues raised until 13 October 2009 when, during an on-site visit, a letter was provided from the local DECCW Compliance officer effectively authorising the original clearing. The applicant’s planning consultant was adamant that no further clearing had occurred beyond 2005 and no definite evidence was available to the contrary.

Following discussion with DECCW in regard to potential joint action, consideration of confidential legal advice provided by DECCW in relation to the dual consent requirement under both the EP&A Act and the Native Vegetation Act and in light of the letter tabled by the applicant, the Council report was withdrawn.

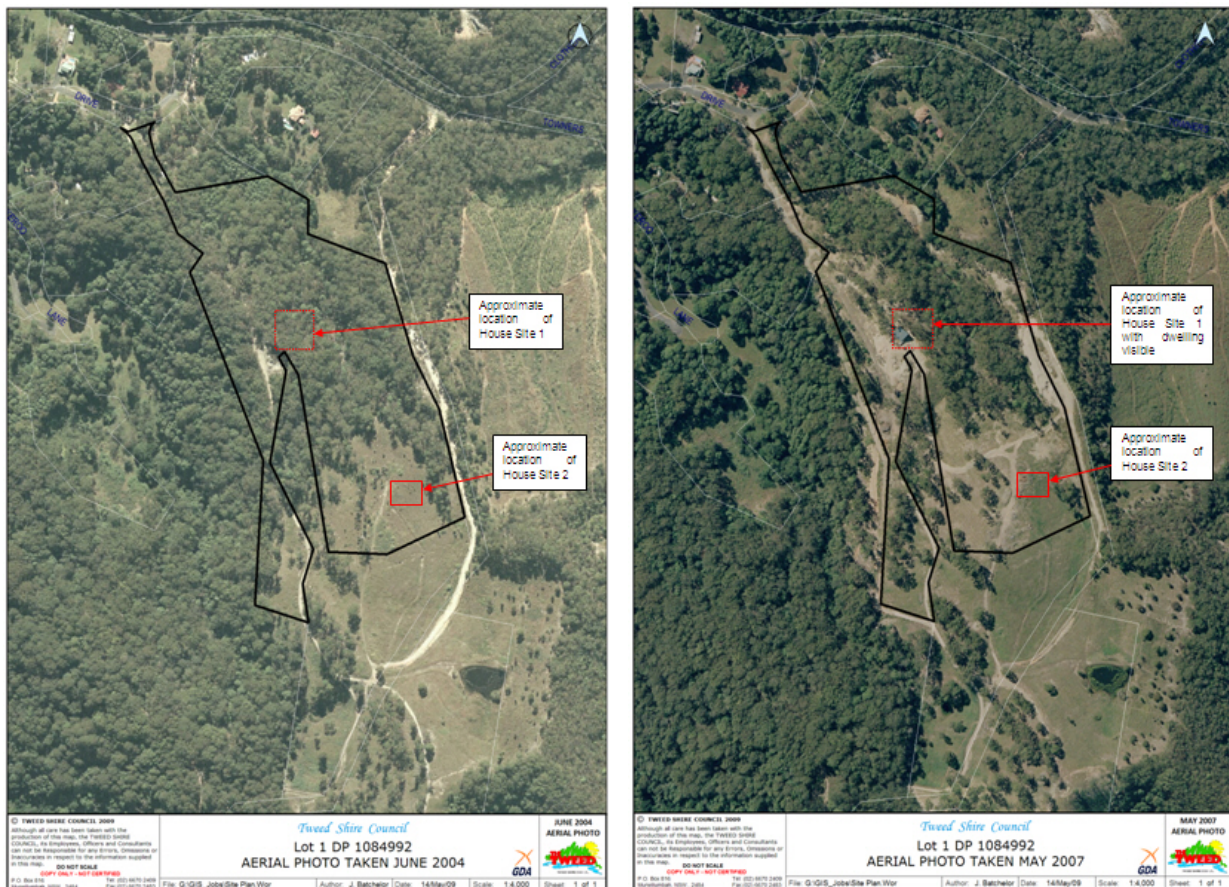


Figure 2 – comparison of 2004 & 2007 aerial photography of the subject site

Proposed Development (DA06/0897.01)

The proposed S96 application makes no changes to the number of allotments (i.e. nine lots are still proposed). The proposed modifications are listed below:

- Re-align the road layout to provide better access to the adjoining allotment to the south (see revised plan of subdivision (Figure 3) below). The difference between the two plans is that road is now proposed to terminate at the southern boundary (between Lots 7 and 8). The proposed modifications would require an amendment to **Condition No 1**, making reference to the new plan of subdivision;
- Stage the development so that Stage 1 incorporates Lots 1, 2, 3 and 9. Stage 2 involves Lots 4, 5, 6, 7 and 8;

- Delete **Condition 17** of the consent, which requires the boundary adjustment under DA06/0832 to be finalised prior to the issue of the construction certificate for civil works;
- Amend the **RFS General Terms of Approval**, with particular regard to reticulated water supply and Asset Protection Zone (APZ) requirements;
- Although not part of the documentation lodged with the S96 application, the applicant has since requested **Condition 73** in relation to overhead power provisions to the site.

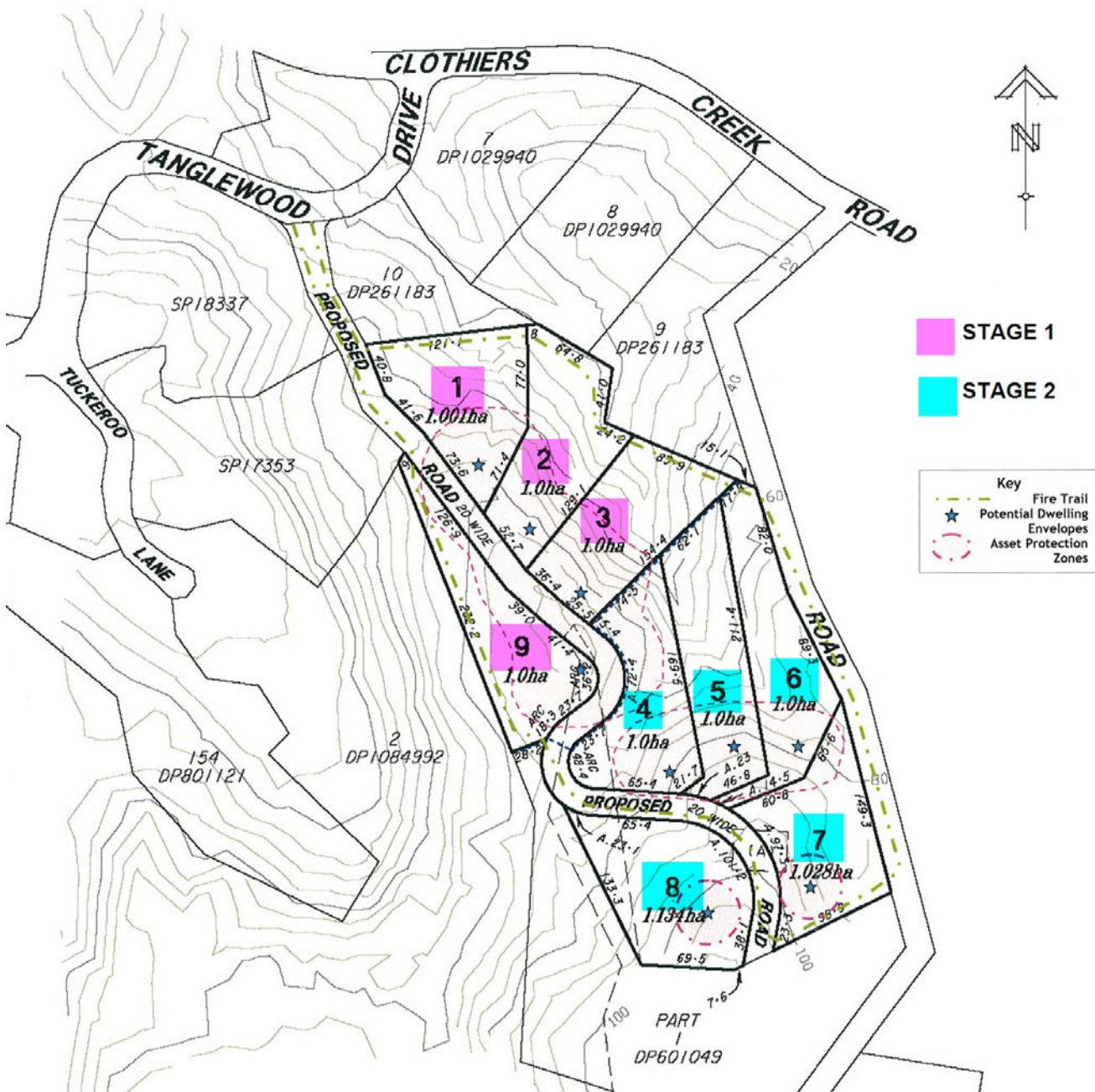


Figure 3: Proposed plan of subdivision (coloured staging areas added for clarity)

Considerations under Section 79C of the Environmental Planning and Assessment Act

As noted above, the original approval required a Rehabilitation Management Plan to be lodged and approved prior to the issue of the construction certificate for civil works (**Condition 18**). Council's Specialist Planner / Ecologist has been involved with negotiations with the applicant in regard to moving this condition to a PSC (Prior to Subdivision Certificate) condition, subject to applying additional ecological protection measures agreed with the applicant, including prohibition of dogs and cats from the subdivision.

Council's Development Engineer has undertaken an assessment of the proposed modifications, and has identified several other changes to conditions of consent. These have been addressed in detail below.

Road Realignment

Council's Development Engineer raised no objections to the proposed realignment of the access road. However it was noted that the end of the road will need to be widened to cater for a cul-de-sac bulb. Council's Development Engineer also made the following note in their report:

'In discussions with Planit and consulting engineers Cardno, it has been noted that the applicant's future intentions are for the road to be further extended to the south, to service a revised layout for the approved adjoining 5 lot subdivision (per Consent 1038/2000DA). I have made it clear that such a road extension would not be supported on engineering grounds, unless the road was 'looped' to provide better connectivity. The proposed cul-de-sac is already excessively long when compared to urban standards, and any further extension would not be easily justified'.

Staging of Development

Although no engineering concerns have been raised with respect to the concept of staging, Council's Development Engineer has noted that the nominated stage boundary would not provide dedicated road access to the west to the adjoining Lot B (to be created per DA06/0832). As such, a minor relocation of the stage boundary is therefore required and has been imposed as a condition of consent.

Council's Development Engineer has noted that the staging of the subdivision will also require:

- Amendment of **Condition 58** (Sec.94 contributions).
- Inclusion of extra condition **DUR1835** re: provision of a temporary turning area at the end of the Stage 1 road works.
- Amendment of **Condition 64** to include creation of a Right-of-Carriageway over the above-mentioned temporary turning area.

An assessment of the contributions applied under Condition 58 highlights that 8ET was applied to the 9 lot subdivision (1ET site credit applied). Staging of the proposal (i.e. Stage 1 incorporating Lots 1, 2, 3, 9 and Stage 2 involving Lots 4, 5, 6, 7 and 8) has resulted in the site credit applying to the first stage (i.e. 3 ET only) and the second stage having the remainder 5ET's applied to the relevant contribution plans. The staged contributions have been calculated at today's rates.

Deletion of Condition 17

Condition 17 states the following:

17. *Prior to the issue of any construction certificate, the proposed boundary adjustment under DA06/0832 will need to be improved, completed, and documentary evidence of registration of the plan of subdivision submitted to Council.*

Council's Development Engineer has noted the following:

*'The applicant requests deletion of this condition but acknowledges that formal access to a southern adjoining property is an over-riding concern. The adjoining property, in conjunction with this property, is covered by an approved boundary adjustment that creates the lot shape that is the subject of this DA. Accordingly, the boundary adjustment **MUST** be completed and registered prior to this subdivision being released (but not necessarily prior to any work being undertaken: this is the basis for the requested amendment).*

The applicant has suggested a condition to be alternatively imposed to address this concern. Condition 17 was originally imposed to ensure construction requirements of this development did not overlap or conflict with property boundaries. However since the adjoining boundary adjustment (DA06/0832) has the same applicant / owner as this development, then in this instance Council will allow the issue of construction certificates prior to completion and registration of the adjoining and overlapping boundary adjustment.

The applicant's request is therefore acceptable: Condition 17 (Pre CC) can be deleted and replaced with another (Pre SC) condition. The terminology of the new condition is to be amended from the applicant's proposal.

Council's recommended wording for the new PSC condition is:

"Prior to the issue of any Subdivision Certificate(s) pursuant to this consent, the proposed boundary adjustment under DA06/0832 must be completed, the Subdivision Certificate relating to DA06/0832 issued, and documentary evidence of registration of the plan of subdivision is to be submitted to Council."

Flora & Fauna

Council's Specialist Planner / Ecologist provided the following comments:

'Requested amendments of relevance to ecological issues are:

1. *Realignment of the road layout and amendment of Condition 1 accordingly. The change in alignment largely relates to a previously cleared area covered by a building envelope. Restricting additional clearing to that absolutely necessary to allow the road has been conditioned.*
2. *Stage the development. No objection is raised as production of management plans and commencement of restoration works is not tied to any one stage or another.*
3. *Delete Condition 17 relating to a required boundary adjustment prior to CC. No objection, although it is noted that this will be required prior to subdivision certificate.*

4. *Amend the Rural Fire Service General Terms of Approval to accord with current Planning for Bushfire Protection Guidelines 2006.*

This is a positive outcome overall as asset protection zones have been reduced, thus less clearing will result and more area remain available for restoration. It is noted that RFS comments are based upon Level 3 construction in accordance with AS3539.

5. *Amend Condition 73 to allow underground power.*

This is likely to be positive in the long term as it removes the need for continual pruning or later tree removal, although the alignment is as yet unknown.

The submitted amendments overall are likely to result in less clearing of native vegetation than presently approved due the general reduction in asset protection zones. The amendment also provides opportunity to add additional ecological protection measures agreed with the applicant, including prohibition of dogs and cats being from the subdivision. This is an important aspect due to the high surrounding habitat value (including part of Cudgen Nature Reserve) and was not previously conditioned'.

The relevant modifications to existing conditions and the addition of new conditions, as recommended by Council's Specialist Planner / Ecologist, have been noted at the end of this memo.

Crown Road / Fire Trail Access

Council's records indicate that the NSW Department of Lands had received an application in March 2009 for the closure of the Crown Road adjoining the subject site. Council's investigation into the road noted that the section of Crown Road in question has full formation and is currently used by the adjoining property owners. The road also provides full access to the surrounding National Parks and Wildlife Service (NPWS) land and is utilised for NPWS inspections of the area.

In addition, the road has been identified by the Rural Fire Services (RFS) for potential fire fighting purposes. Council's records indicate that the NPWS, RFS and Council have made formal objections to the road closure. Although the closure remains a matter between Dept of Lands and adjoining land owners, Council's Property Officer has noted that no further correspondence from Dept Lands has been received on this matter. As such, the Crown Road remains open.

Council's Development Engineer has also noted the following:

'The currently approved road layout ends adjacent to a Crown Road - which provides suitable access as a fire trail, but is never going to provide a permanent publicly accessible road connection to Clothiers Creek Road. This proposal maintains a connection to the Crown Road, albeit by the construction of a fire trail.

This fire trail (and all others within the site) will be required to be covered by a suitable Restriction-on-Title to ensure permanent accessibility and on-going maintenance is undertaken in perpetuity. This was an unstated requirement of the original consent that will be rectified now, by the inclusion of another Restriction as to User. It has increased significance since the proposed road layout no longer terminates at the Crown Road (providing fire truck access), and the cul-de-sac bulb is below the RFS standard diameter (24m) for dead end roads, which disallows U-turn movements for fire trucks.

The cul-de-sac bulb has been conditioned for an 18m diameter bulb. The fire trails will provide 'looped' fire truck access around the development site, which is considered to be an acceptable solution in addressing the performance criteria for safe access for fire fighters and the RFS preference for no dead-end roads. Furthermore, the RFS in their comments dated 2.4.08, raised no objections to the amended road layout or turn-around provisions.

Note: the proposed road carriageway width will now be 7m - as per separate engineering submissions currently under assessment and discussion, as part of the design considerations of the construction certificate process. This is in excess of the minimum carriageway width required per DA Condition 11(1), but will now also comply with RFS requirements.

The RFS prefer fire trails to be on public land so that access is unhindered and maintenance is performed regularly – usually by Council. The RFS do however have a register of fire trails and provide assistance with maintenance of them. This proposal includes fire trails within private property, which will cross internal boundary fencing three times. The fire trails will also connect to a Crown Road twice, as well as the new public road four times. At all of these locations, it is expected that property owners will erect boundary fencing that will obviously cross the fire trails – therefore gates will be required.

This scenario of nine different access gates does not really imply easy accessibility, but the RFS have not raised this as a concern. The RFS merely impose the standard requirement of compliance with Section 4.1.3(3) of 'Planning for Bushfire Protection' – which only states "Gates for fire trails are provided with a lock/key system authorized by the local RFS." It would be preferential to have these gates installed at the time of subdivision, for consistency of gates and locks, however this is not for Council to enforce.

I spoke with the RFS Local Compliance Officer, Scott Sewell (Mullumbimby), and discussed this situation with him. While he prefers a clear un-gated fire trail (the alternative of dedicating a fire trail to Council is an option long gone), he agrees that some situations require gates – for which council and the RFS will need to be vigilant about when fences are eventually erected. He suggests the DA conditions reinforce the requirement for gates by making a specific mention of them, without solely relying on future owners to read the RFS document to ensure they understand and comply with RFS requirements'.

Electricity Services

Electricity services are currently provided to the site from Tanglewood Drive via Country Energy overhead infrastructure. **Condition 73** of the existing consent nominates the extension of overhead power to service this subdivision; however the applicant has requested underground power to be nominated, via letter of 9 July 2008.

Council's Development Engineer raises no objections to this request, even though it is somewhat peculiar. It does however abide by RFS preferences for power servicing to be underground. It is also noted that underground provisioning of electricity is provided elsewhere within the 'Tanglewood' estate. Condition 73 will be modified accordingly.

RFS General Terms of Approval (GTA)

A copy of the proposed modification was forwarded to the RFS for comment, which included a detailed bushfire assessment report. The RFS Condition 1 requires the provision of reticulated water and hydrants through the rural residential estate in accordance with AS2419. The applicant has noted that there is insufficient water supply, capacity and pressure for hydrants to be effective in the event of a bushfire. The applicant has also asked the RFS to review their conditions 4, 5, 6 and 7 in relation to the Planning for Bushfire Protection 2006 guidelines.

A revised bushfire safety authority was subsequently issued, with the revised GTA's significantly reducing the APZ's originally applied to the development. For example, Lots 1, 2 and 3 originally each had a 60m Inner Protection Area (IPA) and a 10m Outer Protection Area (OPA), 70m in total. The revised APZ requirements for the same lots are now a 25m IPA and a 20m OPA, 45m in total. As noted by Council's Specialist Planner / Ecologist, the revised APZ requirements will result in less clearing of the site, which is considered to be a positive outcome.

The revised GTA's will now supersede the originally approved RFS conditions.

Assessment under Section 96(1a) of the Environmental Planning and Assessment Act

Substantially the Same Development

Despite the change in access road location and staging of the development, the proposed modifications will result in the same development as originally approved, with no proposed amendments to the number of allotments within the subdivision. Therefore, the proposal is considered to be substantially the same.

Likely Environmental Impact

As noted above, the main issues arising from the proposed modifications have been satisfactorily addressed. Council's Environment & Health Unit have also applied an appropriate condition with regard to on-site sewage management (OSSM), to ensure the system designs for the proposed allotments are in accordance with the originally approved OSSM report.

The proposed modifications did not require any comment from Council's Building Services Unit.

In conclusion, the proposed amendments are not considered to result in any significant environmental impact, subject to appropriate conditions of consent.

Consideration of Submissions

The proposed modifications were advertised for a period of 14 days, during which two (2) submissions were received.

Summary of Submissions

- The initial subdivision (1 to 2 lots) stated that no buildings should occur on Lot 1, due to its environmental sensitivity – the existing house was built without approval;

Response

- Council records indicate that a 2 lot subdivision was granted in 2005 under DA04/0311, which included an 88B instrument prohibiting building on Lot 1. Since then a dwelling was constructed without approval. Council records indicate that Council's Building Unit has

- A rehabilitation process was to be undertaken, with documentation provided on a regular basis. The submission has requested a response to why a building approval was not required by Council and requested copies of the rehabilitation documentation;
- The submission noted that the 9 lot subdivision was approved in 2006 and requests a copy of the approval. The submission notes that there was no mention of stipulations regarding domestic animals, additional clearance for bushfire control and impact on environmentally important area;
- The submission questions the validity of the previous amendment to the site, without notification to the other Tanglewood residents.
- The submission notes that the originally approved access road running through the site connects with the Crown road, which runs south from Clothiers Creek. The revised layout leaves the access road as a dead-end, with its southern destination incomplete and undefined. To be in keeping with the original development consent, the access road should be defined in its entirety and remain connected to the existing Crown Road;
- The amendment proposes only to provide access to the Crown Road as a fire trail across Lot 7. Therefore, it will no longer guarantee permanent, un-gated or public access to the Crown Road;
- In a submission to the original 9 lot subdivision, the submitter noted that increased population in the area increases the need to access the south western corner of his property. The existing Crown Road is prohibitively steep where it connects to Clothiers Creek Road and has been deliberately blocked for the previous year. The submission suggests that it is logical that he and other affected neighbours should be able to access the Crown Road from the access road running through the subject site.
- requested that the dwelling be decommissioned and all furniture / equipment to be stored in containers, so that the building is non-habitable. A Building Certificate will not be issued for the structure until such time that the current S96 is favourably determined;
- The rehabilitation requirements were not part of the original 2 lot subdivision mentioned above. They were introduced later with the approval of the 9 lot subdivision (DA06/0897), as a result of clearing of the land. It is Council's policy not to reply to the individual requests in a submission. Therefore, a response to the unauthorised building and rehabilitation documentation was not provided. Rehabilitation matters have been incorporated into the assessment of this application. The compliance issues raised are being addressed by Council;
- As noted above, it is Council's policy not to reply to the individual requests in a submission. The submitter is able to request a copy of the approval though, via a separate request to Council and payment of appropriate fees. Council's Specialist Planner / Ecologist has applied additional and appropriate restrictions (no dogs or cats within the subdivision) which have been agreed to by the applicant. A revised Bushfire Safety Authority (under Planning for Bushfire Protection 2006 guidelines has significantly reduced APZ requirements, which has subsequently reduced impact on existing vegetation.
- Given the history of the site, Council officers are not certain as to which "previous amendment" the submission refers to. It can only be assumed that the specific amendment did not trigger notification to adjoining land owners, pursuant to the DCP A11 – Public Notification of Development Proposals.
- As noted by Council's Development Engineer, assessment of this application does not extend to the adjoining allotment to the south. Applicable conditions of consent are to be applied requiring a cul-de-sac at the end of the access road. Any future extension of the access road will require further analysis to assess issues such as a loop road to meet RFS requirements. The road beyond the subject site's southern boundary is not required to be defined in its entirety for this development;
- Whilst it is noted that the proposed amendment will result in access to the Crown Road via a fire trail across Lot 7, Council's Development Engineer has noted that no detail was ever provided with the originally approved road to suggest that a formal "un-gated" thoroughfare would be created. On the contrary, the RFS require access to fire trails to be controlled to prevent use by non-authorized persons;
- Access and use of the Crown Road is a matter to Dept of Lands, as owners of the road. The concerns of limited access to the Crown Road have little merit, given the author of the submission does not directly adjoin the subject subdivision or the Crown Road.

Conclusion

The Section 96 application has been assessed having regard to the matters for consideration under Section 79C and Section 96(1a) of the Environmental Planning and Assessment Act, 1979. The proposed amendments are recommended for approval subject to the condition of amendments detailed below.

Recommendation

Having had regard for the issues raised by this proposal, the following amendments to Notice No. DA06/0897 are recommended:

- **Condition No. 1 is to be amended as per the following Condition 1A:**

- 1A. The development shall be completed in accordance with the Statement of Environmental Effects and **Plan No 16473D (Rev B)** prepared by B & P Surveys and dated 5 December 2007, except where varied by the following requirements, as well as conditions of this consent.
- The Stage boundary nominated on Plan No 16473D (Rev B) is required to be relocated a minimum of 10m to the south (along the proposed road), to provide dedicated public road access to proposed Lot B (*to be created* per Development Consent DA 06/0832);
 - The road width at the southern end is to be widened to cater for a cul-de-sac bulb with a turning circle compliant with Council and Rural Fire Service requirements, including provision for a footpath area and any necessary batters; and
 - Lot numbering may need to be modified to provide consecutive numbering with any staged release.

- **The following new GEN Condition No. 1.1 is to be added.**

- 1.1 The development is to be staged in the following manner:
Stage 1 – Lots 1, 2, 3 and 4.
Stage 2 – Lots 5, 6, 7, 8 and 9.

- **The following new GEN Condition No. 5.1 is to be added.**

- 5.1 The design and installation of any on-site sewage management system shall be in accordance with the HMC On-site Sewage Management Design Report 2006.65 dated June 2006 except where varied with the written consent of the Co-ordinator of Environment and Health.

- **The following new GEN Condition 5.2 is to be added:**

5.2 Rehabilitation of both the Open Eucalypt Forest and Eucalypt Woodland associations (including weed management and revegetation works) is to be undertaken in accordance with the approved Habitat Restoration Plan for a minimum period of five years where unaffected by the APZ, to promote and enhance both the environmental integrity of such areas and connective value between proximate habitats available within the sub region.

- **The following new GEN Condition 5.3 is to be added:**

5.3 In order to preserve the natural habitat of the site and surrounding areas, no occupant, tenant, lessee or registered proprietor of the site or part thereof may own or allow to remain on the site or any part thereof any dog or cat (excluding any "assistance animal" as defined under the Companion Animals Act 1998 (NSW) and referred to in Section 9 of the Disability Discrimination Act, 1992 (Cth)).

Note: "assistance animal" means an animal (Disability discrimination-guide dogs, hearing assistance dogs and trained animals) of the [Disability Discrimination Act 1992](#) of the Commonwealth, but does not include a [working dog](#). Note: That section refers to a guide dog, a dog trained to assist a person in activities where hearing is required and any other animal trained to assist a person to alleviate the effect of a [disability](#).

- **The following new GEN Condition 5.4 is to be added:**

5.4 Development must be undertaken in accordance with the requirements of the approved Habitat Restoration Plan and Threatened Species Management Plan.

- **The following new GEN Condition 5.5 is to be added:**

5.5 No Primary Koala food trees Tallowwood (*Eucalyptus microcorys*), Small-fruited Grey Gum (*Eucalyptus propinqua*) and Forest Red Gum (*Eucalyptus tereticornis*) or Glossy Black Cockatoo feed trees Forest Oak (*Allocasuarina torulosa* or *A. littoralis*) may be removed without separate approval from the Director Planning and Regulation or delegate.

The locations of these trees are to be identified, marked and mapped on site prior to commencement of construction. These trees must be protected throughout the development site during construction works and the operational phases of the development.

- **Condition 9 is to be amended as per the following PCC Condition 9A:**

9A. Where earthworks result in the creation of embankments and/or cuttings greater than 1m high and/or slopes within allotments 17⁰ or steeper, such slopes shall be densely planted in accordance with a detailed landscaping plan. Such plan to accompany the Construction Certificate application.

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

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- (c) Densely plant with appropriate local native species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance.
- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.

- **Condition No. 17 is be DELETED.** *(replaced by new PSC Condition 74.1)*
- **Condition No. 18 is be DELETED.** *(replaced by new GEN Condition 5.2)*
- **Condition No. 19 is be DELETED.** *(replaced by new PCW Condition 26.1)*
- **Condition No. 20 is be DELETED.** *(replaced by new PCW Condition 26.2)*

- **The following new PCW Condition 26.1 is to be added:**

26.1 Prior to the commencement of works, the applicant is to submit a Habitat Restoration Plan in accordance with Council's draft guidelines attached to this consent detailing additional environmental enhancement works across the site. The Habitat Restoration Plan must be approved to the satisfaction of Council's Director of Planning and Regulation or delegate prior to commencement of works. The plan is to concentrate on compensatory planting (particularly koala food trees) in areas unaffected by any subdivision works.

- **The following new PCW Condition 26.2 is to be added:**

26.2 Prior to the commencement of works, a Threatened Species Management Plan for Koalas, Glossy Black Cockatoos and any other threatened species found on the site is to be lodged and approved to the satisfaction of Council's Director of Planning and Regulation or delegate, in accordance with Council's draft guidelines attached to this consent. The Plan is to identify and protect any potential habitat on the subject land and outline measures to reduce known threats or impacts to the species.

- **The following new PCW Condition 26.3 is to be added:**

26.3 Evidence of development consent or authorised exemption for clearing of any further native vegetation under the provisions of the Native Vegetation Act must be provided to Council.
- **Condition 52 is to be amended as per the following DUR Condition 52A:**

52A. Allotment APZ area boundaries are to be clearly designated, to avoid accidental damage to retained vegetation associated with site works.
- **Condition 53 is to be amended as per the following DUR Condition 53A:**

53A. A registered spotter-catcher is to be present during all approved clearing works to ensure safe dispersal of fauna towards the Open Eucalypt Forest association.
- **Condition 54 is to be amended as per the following DUR Condition 54A:**

54A. Routine monitoring of the continued viability of retained vegetation contained within both the Open Eucalypt Forest and Eucalypt Woodland associations during construction works by a suitably qualified ecologist. Visible decline in health of retained vegetation will be reported to Director Planning and Regulation or delegate and remediation measures imposed.
- **The following new DUR Condition 55.1 is to be added:**

55.1 Provision of temporary turning areas and associated signage for refuse vehicles at the end of roads which will be extended in subsequent stages. The temporary turning areas shall be constructed with a minimum 150mm pavement (CBR 45) and shall have a right of carriageway registered over the turning area until such time as the road is extended.
- **The following new DUR Condition 55.2 is to be added:**

55.2 Dogs, cats and other domestic animals are prohibited from entering this locality by a covenant applying to this land.

All persons associated with the development of this site and construction of this building/subdivision are prohibited from permitting any such domestic animals to enter this subdivision locality.

Please note that this prohibition also applies to all contractors, sub-contractors and other trades persons accessing this site.
- **The following new DUR Condition 55.3 is to be added:**

55.3 The consent holder is responsible for installation and maintenance of signage sufficient to clearly indicate the prohibition of cats and dogs at any and all entrances to the development at all times.

- **The following new USE Condition 56.1 is to be added:**

56.1 Dogs, cats and other domestic animals are prohibited from entering this locality by a covenant applying to this land.

- **Condition 58 is to be amended as per the following PSC Condition 58A:**

58A. Section 94 Contributions

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

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

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

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

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

Stage 1

- (a) Tweed Road Contribution Plan:

19.5 Trips @ \$955 per Trips \$18623

(\$868 base rate + \$87 indexation)

S94 Plan No. 4

Sector7_4

- (b) Open Space (Casual):

3 ET @ \$526 per ET \$1578

(\$502 base rate + \$24 indexation)

S94 Plan No. 5

- (c) Open Space (Structured):

Memo

3 ET @ \$602 per ET	\$1806
(\$575 base rate + \$27 indexation)	
S94 Plan No. 5	
(d) Shirewide Library Facilities:	
3 ET @ \$792 per ET	\$2376
(\$792 base rate + \$0 indexation)	
S94 Plan No. 11	
(e) Eviron Cemetery:	
3 ET @ \$120 per ET	\$360
(\$101 base rate + \$19 indexation)	
S94 Plan No. 13	
(f) Community Facilities (Tweed Coast - South)	
3 ET @ \$658 per ET	\$1974
(\$658 base rate + \$0 indexation)	
S94 Plan No. 15	
(g) Emergency Facilities (Surf Lifesaving):	
3 ET @ \$113 per ET	\$339
(\$113 base rate + \$0 indexation)	
S94 Plan No. 16	
(h) Extensions to Council Administration Offices & Technical Support Facilities	
3 ET @ \$1759.9 per ET	\$5279.7
(\$1759.9 base rate + \$0 indexation)	
S94 Plan No. 18	
(i) Regional Open Space (Casual)	

3 ET @ \$1031 per ET \$3093

(\$1031 base rate + \$0 indexation)

S94 Plan No. 26

(j) Regional Open Space (Structured):

3 ET @ \$3619 per ET \$10857

(\$3619 base rate + \$0 indexation)

S94 Plan No. 26

Stage 2

(a) Tweed Road Contribution Plan:

32.5 Trips @ \$955 per Trips \$31038

(\$868 base rate + \$87 indexation)

S94 Plan No. 4

Sector7_4

(b) Open Space (Casual):

5 ET @ \$526 per ET \$2630

(\$502 base rate + \$24 indexation)

S94 Plan No. 5

(c) Open Space (Structured):

5 ET @ \$602 per ET \$3010

(\$575 base rate + \$27 indexation)

S94 Plan No. 5

(d) Shirewide Library Facilities:

5 ET @ \$792 per ET \$3960

(\$792 base rate + \$0 indexation)

S94 Plan No. 11

(e) Eviron Cemetery:

5 ET @ \$120 per ET	\$600
(\$101 base rate + \$19 indexation)	
S94 Plan No. 13	
(f) Community Facilities (Tweed Coast - South)	
5 ET @ \$658 per ET	\$3290
(\$658 base rate + \$0 indexation)	
S94 Plan No. 15	
(g) Emergency Facilities (Surf Lifesaving):	
5 ET @ \$113 per ET	\$565
(\$113 base rate + \$0 indexation)	
S94 Plan No. 16	
(h) Extensions to Council Administration Offices & Technical Support Facilities	
5 ET @ \$1759.9 per ET	\$8799.5
(\$1759.9 base rate + \$0 indexation)	
S94 Plan No. 18	
(i) Regional Open Space (Casual)	
5 ET @ \$1031 per ET	\$5155
(\$1031 base rate + \$0 indexation)	
S94 Plan No. 26	
(j) Regional Open Space (Structured):	
5 ET @ \$3619 per ET	\$18095
(\$3619 base rate + \$0 indexation)	
S94 Plan No. 26	

- **Condition 64 is to be amended as per the following PSC Condition 64A:**
 - 64A. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:
 - (a) Easements for sewer, water supply and drainage over ALL services on private property.
 - (b) A Restriction As To User shall be created over all lots such that;
 - a) Areas external to the nominated building site on each lot are to be maintained for conservation purposes in accordance with the Habitat Restoration Plan referred to in Condition 26.1.
 - b) Provision of fauna-friendly fencing for all boundary and internal fencing, to permit the unhindered dispersal of fauna across the site.
 - c) Restriction as to user regarding no dogs or cats. **Burden:** Each lot on the subject site. **Benefit:** Tweed Shire Council
 - d) Restriction as to user regarding the environmental covenant area to be described within the approved Habitat Restoration Plan for the site and comprised of all lands within the subdivision site outside of building envelopes, asset protection zones or essential approved infrastructure – this area must be subject to an ecological restoration program where native vegetation is protected. **Burden:** Each lot. **Benefit:** Tweed Shire Council.
 - e) Restriction as to user regarding protection of all Koala food tree species on the site of 3m or greater in height. **Burden:** Each lot on the subject site. **Benefit:** Tweed Shire Council
 - f) Restriction as to user regarding building only within the designated building envelope. **Burden:** Each lot on the subject site. **Benefit:** Tweed Shire Council
 - g) Restriction as to user requiring AS3959 Level 3 dwelling construction to ensure clearing for asset protection zones is minimised. **Burden:** Each lot on the subject site. **Benefit:** Tweed Shire Council.
 - h) All future owners are to be provided with a copy of the Environmental Education Brochure generally as per the example @ Attachment 7 of the S.E.E. – which is to be amended to change the reference to Gold Coast City Council on page 4, to Tweed Shire Council.
 - i) As an advisory measure directed at prospective purchasers, include a statement that the property is not connected to reticulated water or sewerage services, and that alternative arrangements will need to be made for same. This will also need

to include provisions to satisfy Rural Fire Service requirements in the event of bushfires.

- (c) Drainage easements may need to be created over the tailouts from road culverts.
- (d) Creation of a Right-of-Carriageway over the temporary turning area to be constructed at the end of the Stage 1 road works.
- (e) Creation of appropriate Rights-of-Carriageway, Restrictions and Positive Covenants as necessary, over all Fire Trails being created and / or formalised on private land, to ensure that;
 - a) Permanent accessibility for the Rural Fire Service is available, particularly where fire trails cross internal or road boundaries (that are fenced), as there is a necessity for gates that are locked with a key/lock system authorised by the local RFS.
 - b) Maintenance is undertaken by the property owner in perpetuity.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

- **Condition 73 is to be amended as per the following PSC Condition 73A:**

73A. The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity (residential and rural residential) has been provided adjacent to the front boundary of each allotment; and

The reticulation includes the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

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.

- **The following new PSC Condition 74.1 is to be added:**

74.1 Prior to the issue of any Subdivision Certificate(s) pursuant to this consent, the proposed boundary adjustment under DA06/0832 must be completed, the

Subdivision Certificate issued, and documentary evidence of registration of the plan of subdivision is to be submitted to Council.

- **The following new PSC Condition 74.2 is to be added:**

74.2 Habitat restoration works shall be completed to a level specified in the approved Habitat Restoration Plan prior to the release of the subdivision certificate and shall be maintained at all times to the satisfaction of the General Manager or his delegate. Trees identified for retention in the Habitat Restoration Plan shall not be removed without separate Council approval.

- **The RFS GTA's are to be replaced the following:**

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

Asset Protection Zone

1. At the commencement of building works and in perpetuity, the property around the dwelling (in all directions) on proposed Lots 1, 2 & 3 to a distance of 25 metres shall be managed as an 'Inner Protection Area' and 20 metres as an 'Outer Protection Area' (OPA) as outlined within *Planning for Bush Fire Protection 2006* and the Service's document 'Standards for asset protection zones'.
2. At the commencement of building works and in perpetuity, the property around the dwelling on proposed Lots 4, 5 & 6 to a distance of 25 metres shall be managed as follows:
 - a. North for a distance of 25 metres as an 'Inner Protection Area' and 20m as an 'Outer Protection Area';
 - b. South for a distance of 20 metres as an 'Inner Protection Area'; and
 - c. East and west for a distance of 15 metres as an 'Inner Protection Area' and 10m as an 'Outer Protection Area'.
3. At the commencement of building works and in perpetuity, the property around the dwelling (in all directions) on proposed Lots 7 & 8 to a distance of 25 metres shall be managed as an 'Inner Protection Area' as outlined within *Planning for Bush Fire Protection 2006* and the Service's document 'Standards for asset protection zones'.
4. At the commencement of building works and in perpetuity, the property around the dwelling (in all directions) on proposed Lot 9 to a distance of 25 metres shall be managed as an 'Inner Protection Area' and 20 metres as an 'Outer Protection Area' (OPA) as outlined within *Planning for Bush Fire Protection 2006* and the Service's document 'Standards for asset protection zones'.

- 5. Section 88B restriction as to user shall be placed on all lots within the subdivision requiring the provision of the required asset protection zones. These APZ's are based on AS3959 Level 3 Construction.

Water and Utilities

- 6. Water, electricity and gas are to comply with Section 4.1.3 of *Planning for Bush Fire Protection 2006*.

Access

- 7. Public Road Access shall comply with Section 4.1.3 (1) of *Planning for Bush Fire Protection 2006*.
- 8. Fire Trails shall comply with Section 4.1.3 (3) of *Planning for Bush Fire Protection 2006*.

Note: This assessment is based upon the potential dwelling envelopes identified on the subdivision plan prepared by B&P Surveys dated 10-11-07 which formed Appendix A of the Bushfire Threat Assessment Report prepared by Planit Consulting dated December 2007.

Colleen Forbes
Development Assessment Unit

RECOMMENDATION APPROVED
Determined by me in accordance with
authority delegated by the General
Manager dated 14 May 2007

Signed:
Rowena Michel

Dated:

Wednesday 17 February 2010

To: Colleen Forbes

From: Sandy Pimm

Subject: Ecological comments on amendment to DA06/0897.01 for a nine (9) lot subdivision, alterations to the approved lot sizes, realignment of the road and the staging of the development into two (2) stages at Lot 1 DP 601049; Lot 1 DP 1084992, ; No. 15 Tanglewood Drive Tanglewood

Reference: DA06/0897.01

71534

[DAMemo]

Previous comment has been provided for the approved nine-lot subdivision now sought to be amended, including conditions requiring site restoration and consideration of fauna issues during construction and occupation. Officer assessment in 2006 (following clearing which established roads and firebreaks) determined that the site is considered to represent "potential" koala habitat under SEPP 44, although insufficient evidence was found to justify "core" Koala habitat on the site, despite scats indicating at least transient use of the site by Koalas. The site is also known to contain feeding habitat and sightings of the threatened Glossy Black Cockatoo. The Eucalypt Open Forest and Woodland on the site is of high habitat value for a suite of forest dependent flora and fauna species.

The site has a history of complaints and some Council action with regard to clearing of native vegetation. A full analysis of the file in 2009 resulted in a Report to Council being written recommending the following options:

1. Commence legal proceedings in the Land and Environment Court against the landowner of Lot 1 DP 1084992 for a breach of the Environmental Planning and Assessment Act 1979 (as amended) relating to non-compliance with consent conditions and construction of a dwelling without consent.
2. Investigate a joint action in the Land and Environment Court with the Department of Environment and Climate Change. Proceedings could be brought under the National Parks & Wildlife Act 1974 and the Native Vegetation Act 2003.
3. Failing legal action, Council could negotiate a significant restoration plan and program with the owners to restore the remnant vegetation on the site. This option is not favoured as it is unknown at this stage whether restoration could be satisfactorily achieved. In addition, it is likely to confer a development benefit to the owners as a result of unauthorised clearing activities.

On 10 July 2009, this Council report was sent to the applicant seeking their response, comment or clarification of the issues raised within the report to ensure factual information prior to its' consideration by Council. The applicant failed to respond to the issues raised until 13 October 2009 when, during an on-site visit, a letter was provided from the local DECCW Compliance officer effectively authorising the original clearing (on file). Adam Smith was adamant that no further clearing had occurred beyond 2005 and no definite evidence was available to the contrary.

Following discussion with DECCW in regard to potential joint action, consideration of confidential legal advice provided by DECCW in relation to the dual consent requirement under both the EP&A Act and the Native Vegetation Act and in light of the letter tabled by the applicant, the Council report

was withdrawn. Consideration of this issue has however meant a considerable overall delay in the assessment of the modification presently under consideration.

Requested amendments of relevance to ecological issues are:

1. Realignment of the road layout and amendment of Condition 1 accordingly.

The change in alignment largely relates to a previously cleared area covered by a building envelope. Restricting additional clearing to that absolutely necessary to allow the road has been conditioned.

2. Stage the development

No objection is raised as production of management plans and commencement of restoration works is not tied to any one stage or another.

3. Delete Condition 17 relating to a required boundary adjustment prior to CC.

No objection, although it is noted that this will be required prior to subdivision certificate.

4. Amend the Rural Fire Service General Terms of Approval to accord with current *Planning for Bushfire Protection Guidelines 2006*.

This is a positive outcome overall as asset protection zones have been reduced, thus less clearing will result and more area remain available for restoration. It is noted that RFS comments are based upon Level 3 construction in accordance with AS3539.

5. Amend Condition 73 to allow underground power.

This is likely to be positive in the long term as it removes the need for continual pruning or later tree removal, although the alignment is as yet unknown.

The submitted amendments overall are likely to result in less clearing of native vegetation than presently approved due the general reduction in asset protection zones. The amendment also provides opportunity to add additional ecological protection measures agreed with the applicant, including prohibition of dogs and cats being from the subdivision. This is an important aspect due to the high surrounding habitat value (including part of Cudgen Nature Reserve) and was not previously conditioned.

CONDITIONS

The following modifications and additions to consent conditions are recommended:

General

- Condition 9 to be amended as follows (**sections highlighted green to be added; red to be removed**):

9. Where earthworks result in the creation of embankments and/or cuttings greater than 1m high and/or slopes within allotments 17⁰ or steeper, such slopes shall be densely planted in accordance with a detailed landscaping plan. Such plan to accompany the Construction Certificate application.

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

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.

- (c) Densely plant with appropriate local sub-tropical (rainforest) native and exotic species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
 - (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.
- Condition 18 to be moved from *Prior to Issue of Construction Certificate* to *General* as agreed with the applicant, and amended to be more specific and achievable as follows:
18. Rehabilitation of both the Open Eucalypt Forest and Eucalypt Woodland associations (including weed management and revegetation works) is to be undertaken in accordance with the approved Habitat Restoration Plan for a minimum period of five years where unaffected by the APZ, to promote and enhance both the environmental integrity of such areas and connective value between proximate habitats available within the sub region.

The following conditions to be added:

1. In order to preserve the natural habitat of the site and surrounding areas, no occupant, tenant, lessee or registered proprietor of the site or part thereof may own or allow to remain on the site or any part thereof any dog or cat (excluding any "assistance animal" as defined under the Companion Animals Act 1998 (NSW) and referred to in Section 9 of the Disability Discrimination Act, 1992 (Cth)).
 Note: "assistance animal" means an animal (Disability discrimination-guide dogs, hearing assistance dogs and trained animals) of the Disability Discrimination Act 1992 of the Commonwealth, but does not include a working dog. Note: That section refers to a guide dog, a dog trained to assist a person in activities where hearing is required and any other animal trained to assist a person to alleviate the effect of a disability.
2. Development must be undertaken in accordance with the requirements of the approved Habitat Restoration Plan and Threatened Species Management Plan.
3. No Primary Koala food trees Tallowwood (*Eucalyptus microcorys*), Small-fruited Grey Gum (*Eucalyptus propinqua*) and Forest Red Gum (*Eucalyptus tereticornis*) or Glossy Black Cockatoo feed trees Forest Oak (*Allocasuarina torulosa* or *A. littoralis*) may be removed without separate approval from the Director Planning and Regulation or delegate. The locations of these trees are to be identified, marked and mapped on site prior to commencement of construction. These trees must be protected throughout the development site during construction works and the operational phases of the development.

Prior to Commencement of Works

- Condition 19 to be moved from *Prior to Issue of Subdivision Certificate* to *Prior to Commencement of Works* as agreed with the applicant, and amended to be more specific and achievable as follows:
19. The applicant is to submit to Council's satisfaction a Habitat Restoration Plan in accordance with Council's draft guidelines attached to this consent detailing additional environmental enhancement works across the site. The plan is to concentrate on compensatory planting (particularly koala food trees) in areas unaffected by any subdivision works.

- Condition 20 to be moved from *Prior to Issue of Construction Certificate* to *Prior to Commencement of Works* as agreed with the applicant, and amended to be more specific and achievable as follows:
20. A Threatened Species Management Plan for Koalas, Glossy Black Cockatoos and any other threatened species found on the site is to be prepared to the satisfaction of Council's Director of **Development Services** Planning and Regulation or **his** delegate in accordance with Council's draft guidelines attached to this consent. **A Plan of Management relating to koala habitat** The Plan is to identify and protect any potential habitat on the subject land and outline measures to reduce known threats or impacts to the species. **ensure the impact of the subdivision on any remaining koala population is minimised.**
- The following conditions to be added;
4. **Evidence of development consent or authorised exemption for clearing of any further native vegetation under the provisions of the Native Vegetation Act must be provided to Council.**

During Construction

52. Allotment APZ area boundaries are to be clearly designated **with highly visible traffic barriers**, to avoid accidental damage to retained vegetation associated with site works.
53. A registered spotter-catcher is to be present during all approved clearing works to ensure safe dispersal of fauna towards the Open Eucalypt Forest association. **If a Koala is present within a tree proposed to be felled, the felling of that tree and any tree within a 20m radius of the tree containing the Koala must be delayed until the Koala has moved to safe habitat outside of the clearing zone.**
54. Routine monitoring of the continued viability of retained vegetation contained within both the Open Eucalypt Forest and Eucalypt Woodland associations during construction works **must be undertaken** by a suitably qualified ecologist. Visible decline in health of retained vegetation will be reported to Director Planning and Regulation or delegate and remediation measures imposed.
- The following condition to be added:

DUR1085	Dev Bldg	<p># Dogs, cats and other domestic animals are prohibited from entering this locality by a covenant applying to this land.</p> <p>All persons associated with the development of this site and construction of this building/subdivision are prohibited from permitting any such domestic animals to enter this subdivision locality.</p> <p>Please note that this prohibition also applies to all contractors, sub-contractors and other trades persons accessing this site.</p>	[DUR1085]
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Prior to Issue of Subdivision Certificate

- Delete paragraph c) from Condition 64 as no dogs will be permitted within the subdivision.
64. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:
- c) Incorporation of domestic animal – dog containment fencing for any future owners with dogs. Such fencing is to be contained within the APZ area or to a maximum of 1000sqm whichever is the larger. Such fencing is to be designed to minimise predation on protected fauna.
- Add additional conditions as below:
5. As a minimum the following restrictions as to user under Section 88B of the Conveyancing Act are to be created to Council's satisfaction:
- (a) Restriction as to user regarding no dogs or cats. **Burden:** Each lot on the subject site. **Benefit:** Tweed Shire Council
 - (b) Restriction as to user regarding the environmental covenant area to be described within the approved Habitat Restoration Plan for the site and comprised of all lands within the subdivision site outside of building envelopes, asset protection zones or essential approved infrastructure – this area must be subject to an ecological restoration program where native vegetation is protected. **Burden:** Each lot. **Benefit:** Tweed Shire Council.
 - (c) Restriction as to user regarding protection of all Koala food tree species on the site of 3m or greater in height. **Burden:** Each lot on the subject site. **Benefit:** Tweed Shire Council
 - (d) Restriction as to user regarding building only within the designated building envelope. **Burden:** Each lot on the subject site. **Benefit:** Tweed Shire Council
 - (e) Restriction as to user requiring AS3959 Level 3 dwelling construction to ensure clearing for asset protection zones is minimised. **Burden:** Each lot on the subject site. **Benefit:** Tweed Shire Council.
6. Any Section 88B Instrument creating Restrictions as to user, Rights of carriageway or Easements which benefit TSC must contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of TSC.
7. The consent holder is responsible for installation and maintenance of signage sufficient to clearly indicate the prohibition of cats and dogs at any and all entrances to the development at all times.

PSC0495 Dev Subd	# Habitat restoration works shall be completed to a level specified in the approved HRP prior to the release of the subdivision certificate and shall be maintained at all times to the satisfaction of the General Manager or his delegate. Trees identified for retention in the Habitat Restoration Plan shall not be removed without separate Council approval. PSC0495
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Use

- Add additional conditions as below:

8. Dogs, cats and other domestic animals are prohibited from entering this locality by a covenant applying to this land.

Sandy Pimm
Specialist Planner/Ecologist