

TITLE: [PR-CM] Development Application DA09/0006 for a Four (4) Lot Industrial Subdivision, Construction of Part of Ozone Street and Associated Drainage at Lot 1 DP 102255, No. 16-18 Ozone Street, Chinderah

ORIGIN:

Development Assessment

FILE NO: DA09/0006 Pt2

SUMMARY OF REPORT:

Council is in receipt of an application for a four (4) lot industrial subdivision at 16 -18 Ozone St, Chinderah. The application includes the construction of 630m of Ozone Street which is presently unformed. The subject site is zoned 4(a) Industrial and has an area of 20,000m². The application seeks consent to subdivide the parent lot into 4 lots with approximate areas of 5000m² each (each with frontage to Ozone St of approximately 38.5m). Future built form is not known at this stage and consent is sought for subdivision and associated road works only.

The site is located along an unformed section of Ozone Street, with access presently provided via a gravel track from Anne Lane. The subdivision therefore requires the construction of approximately 630m of new road (in the designated road reserve), to an urban wider access street standard. The proposed road would be accessed via Chinderah Bay Drive.

The Ozone Street road reserve has a width of 30.18m and an existing open drain is located on its southern side that supports an Endangered Ecological Community (EEC) of Swamp Oak. To accommodate the required road widths (9m wide pavement within 17m wide road reserve), approximately 4500m² (at least half) of the EEC is proposed to be cleared.

In addition, the application proposes to clear all vegetation on the subject site as a result of filling requirements in a flood prone area.

Following public notification, one (1) submission was received, which focused on potential amenity impacts arising from the proposal and queried the number of vehicle trips/day specified by the applicant. These issues have been considered in the assessment of this application as detailed in the following report.

It is noted that the open drainage line is classified as a natural waterway for the purposes of the Water Management Act 2000 (WMA 2000) and the Fisheries Management Act 1994 (FMA 1994). A Controlled Activity Approval (under the WMA 2000) and a Fisheries permit (under the FMA 1994) are therefore required. Neither of these permits have been obtained to date as the proposal was not nominated as integrated development.

Council has been served with a Deemed Refusal Class 1 Appeal in the Land & Environment Court NSW, in relation to this application. However, should this application be approved (by way of a deferred commencement to allow for a suitable compensatory

package to be negotiated and the provision of an aboriginal heritage assessment) it is envisaged that this appeal will be withdrawn. Should the application be refused Council's solicitors will be instructed to defend the appeal commencing with the first call over on 26 October 2009.

It is considered that the application is suitable for a deferred commencement approval to enable environmental and Aboriginal Cultural Heritage to be suitably addressed before any development consent is activated.

RECOMMENDATION:

That Development Application DA09/0006 for a four (4) lot industrial subdivision at Lot 1 DP 102255, No. 16-18 Ozone Street Chinderah be approved subject to the following conditions: -

"DEFERRED COMMENCEMENT"

This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 6 months of the date of notification.

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 67 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

SCHEDULE "A"

Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 67 of the Regulations as amended.

- A. A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 2 for 1 basis of the Swamp Oak Floodplain Forest impacted by the proposed development. The Habitat Restoration Plan must include:

 - a schedule and timing of works to be undertaken
 - a statement of commitment by the consent holder to funding the proposed works
 - a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.**

- B. An Aboriginal archaeological heritage assessment shall be prepared by a suitably qualified and experienced consultant to the satisfaction of Council's General Manager or his delegate to determine the impact of the proposed subdivision and road works. The assessment shall include consultation with the Tweed Byron Local Aboriginal Land Council and**

any other related stakeholders. The assessment shall also include any mitigation and management measures where required.

SCHEDULE B

NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos: SK20090604 (9m wide road) and SK20090610 (road layout) prepared by Opus Qantec McWilliam and dated June 2009, Figure 6.0 (9m wide road option 2) as amended in red, prepared by Opus Qantec McWilliam and dated November 2008, DWG 00926-01 (Proposed Subdivision Plan) prepared by Planit Consulting and dated October 2008, and the Habitat Restoration Plan approved under Schedule A of this consent, 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 adopted Development Design and Construction Specifications.**

[GEN0125]

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

[GEN0135]

- 4. The level of fill placed on the site shall not exceed RL 2.0m AHD.**

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

- 5. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works (minimum \$1,552).**

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

The bond will be refunded, if not expended, when the final Subdivision Certificate is issued.

[PCC0275]

- 6. 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]

- 7. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.**

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

- 8. A traffic control plan in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2 shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.**

[PCC0865]

- 9. 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 adopted Design and Construction specifications.**

URBAN ROAD

- (a) Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 17m road reserve width as per Council's road works standards for an access street with a bus route.**

INTERSECTION

- (b) Construction of an intersection layout for a basic left turn treatment in accordance with AUSTRROADS Pt 5 "Intersections at Grade" giving particular attention to sight distance.**

[PCC0875]

- 10. Prior to the issue of a Construction Certificate the following detail in accordance with Councils adopted 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
- roadworks/furnishings
- stormwater drainage
- water supply works
- sewerage works
- landscaping works
- sedimentation and erosion management plans
- location of all service conduits (water, sewer, Country Energy and Telstra)

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]

11. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 – Stormwater Quality*.
 - (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 – Stormwater Quality*.
 - (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.
 - (d) Specific Requirements to be detailed within the Construction certificate application include:
 - (i) Shake down area along the haul route immediately before the intersection with the road reserve.

[PCC1105]

12. A construction certificate application for works that involve any of the following:-

- connection of a private stormwater drain to a public stormwater drain
- installation of stormwater quality control devices
- erosion and sediment control works

Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

Where Council is requested to issue a construction certificate for civil works associated with this consent, the abovementioned works can be incorporated as part of the cc application, to enable one single approval to be issued. Separate approval under section 68 of the LG Act will then NOT be required.

[PCC1145]

13. 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]

14. Where water is to be drawn from Councils reticulated system, the proponent shall: -

- Make application for the hire of a Tweed Shire Council metered standpipe including Councils nomination of point of extraction.
- Where a current standpipe approval has been issued application must be made for Councils nomination of a point of extraction specific to the development.
- Payment of relevant fees in accordance with Councils adopted fees and charges.

[PCC1205]

15. Prior to the issue of a construction certificate the applicant is required to lodge an application to install/operate an onsite sewerage management system (private sewage ejection pump station) under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval.

[PCC1285]

16. Engineering plans and specifications lodged with an application for a construction certificate are to provide detail for the following works: -
- Common sewer rising main to be accepted as Council infrastructure with each lot to have a private pressure pump station.
 - The pump stations are to be designed within a small compound that includes the control box and concrete slab.
 - A boundary assembly shall be provided for each lot which is no more than 1m from the point on the boundary where the main from the pump station crosses into the road reserve.
 - The pump stations and rising main are to be designed in accordance with Council's design and construction specifications and the WSA 07 pressure sewer code of Australia.

[PCCNS01]

17. Prior to issue of a construction certificate a Sediment & Erosion Control Management Plan relating to the access road and open drain shall be provided to Council to the satisfaction of Council's General Manager or delegate.

[PCCNS02]

18. Prior to issue of a construction certificate a Water Quality Monitoring Program shall be provided to Council to the satisfaction of Council's General Manager or delegate.

[PCCNS02]

19. Adequate transverse drainage shall be provided to connect existing stormwater runoff discharge points from the north of Ozone Street through to the open drain on the southern side of the new carriageway. Details of the transverse drainage shall be submitted with the s68 Stormwater Application for separate Council approval prior to the issue of a construction certificate.

20. Roadworks in Ozone Street shall maintain the integrity of the earth bund along the southern boundary of the road reserve.

21. Any works associated with the Ozone Street road construction that encroach on private land require the written consent of the affected landholder(s). A copy of the consent(s) shall be submitted to the PCA prior to the works being undertaken.

[PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

22. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.

23. **Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.**

24. **Civil work in accordance with a development consent must not be commenced until:-**

- (a) **a construction certificate for the civil work has been issued in accordance with Councils adopted Development Design and Construction Specification C101 by:**

- (i) **the consent authority, or**
- (ii) **an accredited certifier, and**

- (b) **the person having the benefit of the development consent:**

- (i) **has appointed a principal certifying authority,**
- (ii) **has appointed a Subdivision Works Accredited Certifier (SWAC) in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:**

C4: Accredited Certifier – Stormwater management facilities construction compliance

C6: Accredited Certifier – Subdivision road and drainage construction compliance

The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to approval and issue of any Construction Certificate, and

- (iii) **has notified the consent authority and the council (if the council is not the consent authority) of the appointment,**
 - (iv) **a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and**
- (c) **the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.**

25. **Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area where required to the satisfaction of the Principal Certifying Authority.**

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

This sign is to remain in position for the duration of the project.

[PCW0985]

26. **All imported fill material shall be from an approved source. Prior to the commencement of work details of the source of fill, description of material and documentary evidence that the fill material is free from any contaminants shall be submitted to Tweed Shire Council for approval.**

[PCWNS01]

27. **Prior to the commencement of works on the access road and open drain an inspection is to be arranged with Council's Environmental Health Officer to ensure the implementation of the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated June 2009 is undertaken.**

[PCWNS02]

28. **Prior to the commencement of any demolition works on the site a development application for demolition is to be submitted to and approved by Council.**

[PCWNS03]

29. **Commencement of works in accordance with the approved Habitat Restoration Plan must be demonstrated prior to clearing of the Swamp Oak Floodplain Forest vegetation.**

30. **A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities must be obtained prior to commencement of the works.**

31. **A permit under s205 of the Fisheries Management Act 1994 for harm to marine vegetation (seagrass, mangroves, kelp) must be obtained prior to commencement of the works.**

32. **Environmental safeguards (silt curtains, booms etc.) are to be utilised during reconstruction of the drainage line to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to commencing, during and after works.**

[PCWNS04]

33. **Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, a**

Controlled Activity Approval under the Water Management Act 2000 must be obtained from the Department of Environment, Climate Change and Water. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.

[PCWNS05]

- 34. Appropriate measures are to be put in place during the construction and/or demolition period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.**

[DUR2405]

DURING CONSTRUCTION

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

[DUR0005]

- 36. Construction 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]

- 37. 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.

LA eq 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.

LA eq 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]

38. All pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring or adjacent premises and be acoustically shielded to the satisfaction of Council's General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.

[DUR0225]

39. All lots must be graded to prevent the ponding of surface water and be adequately vegetated to prevent erosion from wind and/or water to the satisfaction of the General Manager or his delegate.

[DUR0745]

40. 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]

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

[DUR0815]

42. 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]

43. 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]

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

- Noise, water or air pollution
- Minimise impact from dust during filling operations and also from construction vehicles
- No material is removed from the site by wind

[DUR1005]

45. 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]

46. A concrete footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire length of the Ozone Street upgrade in accordance with Councils Development Design and Construction Specifications and Standard Drawing SD013.

Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork and subgrade to be inspected.

[DUR1735]

47. 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]

48. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.

- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.
- (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.
- (c) That site fill areas have been compacted to the specified standard.
- (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.

[DUR1805]

49. 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 adopted Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

50. 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) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Pathways, footways, bikeways - formwork/reinforcement
- (h) Final inspections – on maintenance
- (i) 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

Sewer Pump Station

- (a) Excavation
- (b) Formwork/reinforcement
- (c) Hydraulics
- (d) Mechanical/electrical

(e) Commissioning - on maintenance

(f) 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]

51. The 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]

52. Inter allotment drainage shall be provided to all lots where roof water for future structures cannot be conveyed to the street gutter by gravitational means.

[DUR2285]

53. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils adopted Design and Construction Specification.

[DUR2355]

54. 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]

55. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate.

[DUR2425]

56. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/l. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results

recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.

[DUR2435]

57. During construction, a “satisfactory inspection report” is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR2445]

58. All works associated with the access road and open drain are to be undertaken in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated June 2009.

[DURNS01]

59. The approved water quality monitoring program is to be implemented during any earthworks or construction activity for any runoff from the site, and is to continue until stabilisation of any exposed areas.

[DURNS02]

60. Vegetation clearing at all locations shall be limited to the minimum necessary for the road alignment, and all works sites, stockpile areas, storage facilities and vehicle parking and maintenance areas shall be located on already disturbed land, avoiding any necessity for the clearing of vegetation for these activities.

61. Sand, gravel, silt, topsoil or other materials must not be stockpiled within 50 metres of the water unless surrounded by sediment control measures.

62. All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.

[DURNS02]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

63. 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]

64. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

A Subdivision Certificate shall NOT be issued unless the Certifying Authority is satisfied provisions pursuant to Section 109J of the EP&A Act, 1979 have been complied with and the Certifying Authority has

sighted Councils contributions sheet and Certificate of Compliance signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water DSP5:	4.8 ET @ \$10709 per ET	\$51403.20
Sewer Kingscliff:	15.5041 ET @ \$5146 per ET	\$79784.10

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

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

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

[PSC0165]

65. 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.

(a) Tweed Road Contribution Plan:

19.5 Trips @ \$861 per Trips \$16790

(\$782 base rate + \$79 indexation)

S94 Plan No. 4

Sector6_4

**(b) Extensions to Council Administration Offices
& Technical Support Facilities**

0.6001 ET @ \$1996.8 per ET \$1198.28

(\$1996.8 base rate + \$0 indexation)

S94 Plan No. 18

[PSC0175]

66. Section 94 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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.

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5 prior to the issue of a construction certificate. The contribution shall be based on the following formula:-

$$\text{\$Con}_{\text{TRCP - Heavy}} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

\\$Con_{TRCP - Heavy} heavy haulage contribution

and:

Prod. projected demand for extractive material to be hauled to the site over life of project in tonnes

**Dist. average haulage distance of product on Shire roads
(trip one way)**

\\$Unit the unit cost attributed to maintaining a road as set out in Section 7.2 (currently 5.4c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.6

[PCC0225/PSC0185]

- 67. Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.**

The bond shall be based on 5% of the value of the works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

- 68. 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]

- 69. Prior to the issue of a Subdivision Certificate, Works as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council Development Control Plan A5 - Subdivisions Manual and Councils Development Design and Construction Specification, D13 - Engineering Plans.**

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;**
- (b) the plans accurately reflect the Work as Executed.**

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed plans.

[PSC0735]

- 70. 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]

- 71. 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 public services/infrastructure on private property.**

- (b) A Section 88B restriction to user shall be placed on the land title of each new allotment to limit site coverage of structures and permanent improvements to retain a minimum of 50% of the area available for flood flow.

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.

[PSC0835]

72. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

[PSC0855]

73. Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Council within three months of registration of the Subdivision Certificate in accordance with the Survey Practices Regulation.

[PSC0865]

74. 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 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]

75. 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 - Roads

- (b) Compliance Certificate - Water Reticulation**
- (c) Compliance Certificate - Sewerage Reticulation**
- (d) Compliance Certificate - Drainage**

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]

- 76. The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.**

[PSC0925]

- 77. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of the stormwater pipes and sewerage system including joints and junctions will be required to demonstrate that the standard of the stormwater system is acceptable to Council.**

Any defects identified by the inspection are to be repaired in accordance with Councils adopted Development Design and Construction Specification.

All costs associated with the CCTV inspection and repairs shall be borne by the applicants.

[PSC1065]

- 78. Prior to issuing a Subdivision Certificate, reticulated water supply and sewerage reticulation shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.**
- 79. The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act, 2000 to be certified by an Accredited Certifier.**

[PSC1115]

- 80. The production of written evidence from the local telecommunications supply authority certifying that satisfactory arrangements have been made for the provision of underground telephone supply.**

[PSC1165]

81. Electricity

- (a) **The production of written evidence from the local electricity supply authority certifying that reticulation of underground electricity has been completed; and**
- (b) **The reticulation to include 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.**

[PSC1185]

- 82. Prior to the issue of a subdivision certificate, the applicant shall produce a copy of the “satisfactory inspection report” issued by Council for all s68h2 permanent stormwater quality control devices.**

[PSCNS01]

- 83. Primary weeding and/or planting and establishment will be completed in accordance with Habitat Restoration Plan prior to issue of subdivision certificate**

[PSCNS02]

- 84. Prior to the issue of a Subdivision Certificate, a positive covenant under Section 88B of the Conveyancing Act is to be placed on the title of the proposed allotments to the satisfaction of Council's General Manager or his delegate. The covenant shall inform future owners that Tweed Shire Council will maintain the pressure pump station and delivery pipe system and require access to install and maintain the pressure pump station. The pump station will remain the property of Council. The 88B Instrument shall benefit Tweed Shire Council and contain a provision enabling the easement or right of access to be revoked, varied or modified only with the consent of Council.**

[PSCNS03]

REPORT:

Applicant: CMF Property Services Ltd
Owner: Wareemba Investments Pty Ltd
Location: Lot 1 DP 102255 No. 16-18 Ozone Street, Chinderah
Zoning: 4(a) Industrial
Cost: \$650

BACKGROUND:

The subject site is located on the eastern side of the Pacific Highway and is thus severed/isolated from the existing industrial estate in Morton/Rotumah Streets at Chinderah. The site is one of only four (4) remaining industrial zoned allotments on the western side of the highway.

Surrounding sites are zoned 2(a) Low Density Residential to the north and 3(d) Waterfront Enterprise, with the predominant built form being residential development (including two caravan/holiday parks) to the north west of the subject site. The Action Sands property adjoins the subject site to the west and vacant RTA owned land is located between the subject site and the highway to the east and south.

The site is presently occupied by two (2) dwellings, two (2) sheds, a concrete driveway and a gravel track. All structures are proposed to be demolished, should the application receive approval. The site has been previously used as a nursery and contains both natural and planted areas of vegetation, including an established windrow of eucalypts on the site's eastern boundary.

The existing drain running along the unformed road reserve connects directly with the Tweed River to the west. A tidal floodgate has recently been installed within the larger existing floodgate to allow direct tidal passage between the drainage line and the Tweed River to improve fish passage, reduce mosquito and midge breeding and balance acidity issues. The drain is classified as a natural waterbody for the purposes of the Water Management Act 2000 and the Fisheries Management Act, and therefore requires a Controlled Activity Approval from the Department of Environment, Climate Change and Water and a Fisheries Permit for dredging of 'waterland' from NSW Fisheries. Advice and permits from such agencies has not been sought to date as the application has not been nominated as integrated development. Should the application be favourably supported, the abovementioned permits will be required to be obtained prior to any works commencing.

Construction of Ozone Street is required for approximately 630m to an "urban wider access street" standard. The application originally proposed two options with respect to road design: a 13m wide pavement (within 20m wide road reserve); or a 9m wide pavement (within a 17m wide road reserve). After consideration, the 9m wide pavement option is considered to be the most appropriate for the proposed development, which will cater for a 129 vehicles per day whilst resulting in the least amount of impact on the existing drain and EEC.

The subject site is identified as containing Class 3 Acid Sulphate Soils (ASS), and the applicant has submitted an ASS Management Plan to the satisfaction of Council's Environmental Health Officer.

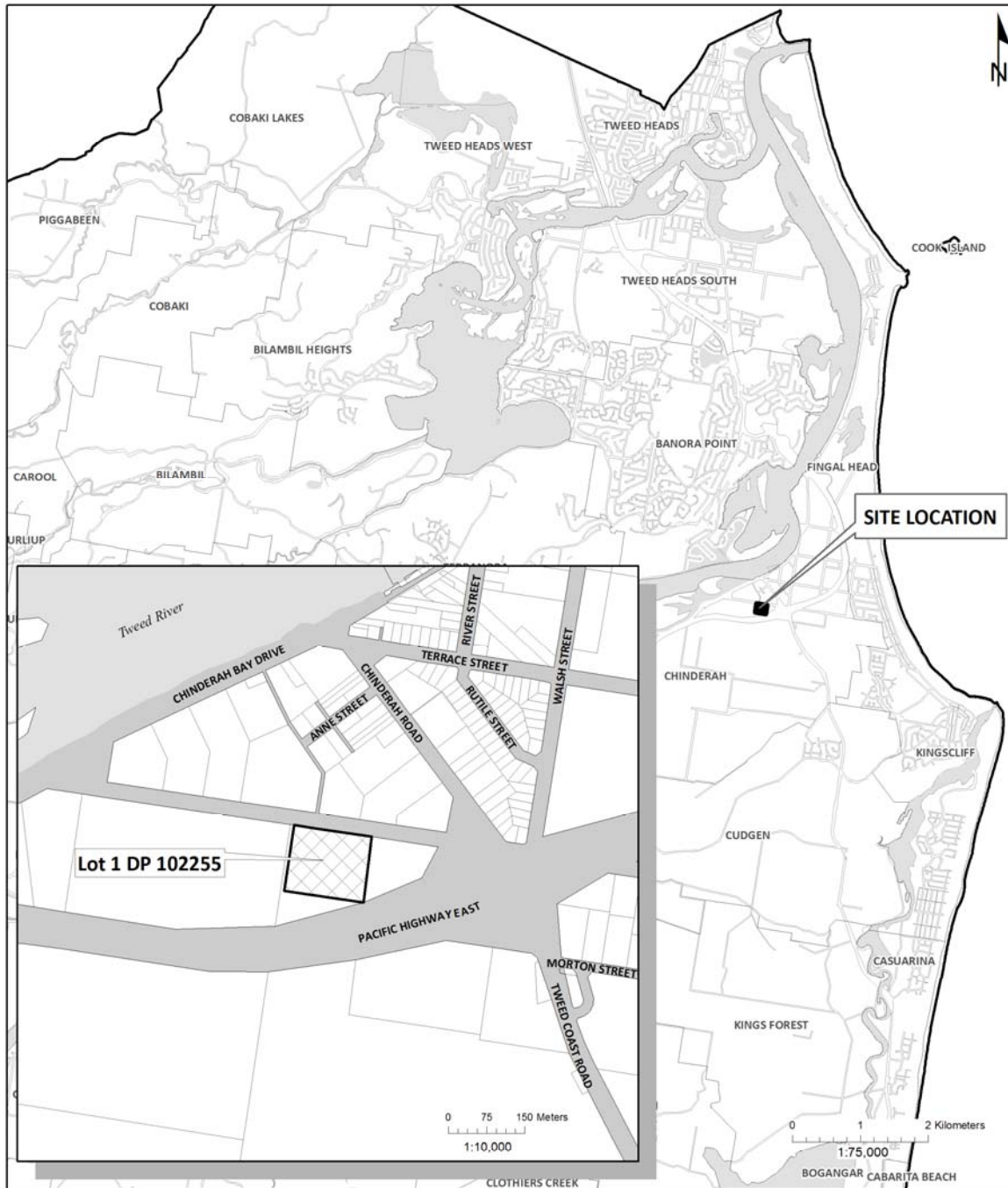
PROPOSAL

The proposal involves the subdivision of the parent allotment into four (4) allotments of similar size (5000m²), each with a direct frontage of 38.5m to the proposed new road pavement along Ozone Street.

The proposal incorporates construction of Ozone Street, concrete lining of the drainage channel and filling of the subject site to meet flooding requirements.

The future uses of the lots are not known at this stage.

SITE DIAGRAM:



LEGEND

Lot 1 DP 10225
No. 16-18 Ozone Street, Chinderah

Filename: z:\esri\planning\mxd\A4P_B&W_SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 13 October, 2009

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Dial before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.



Cadastre 13 October, 2009
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Coordinate System - MGA Zone 56
 Datum - GDA 94

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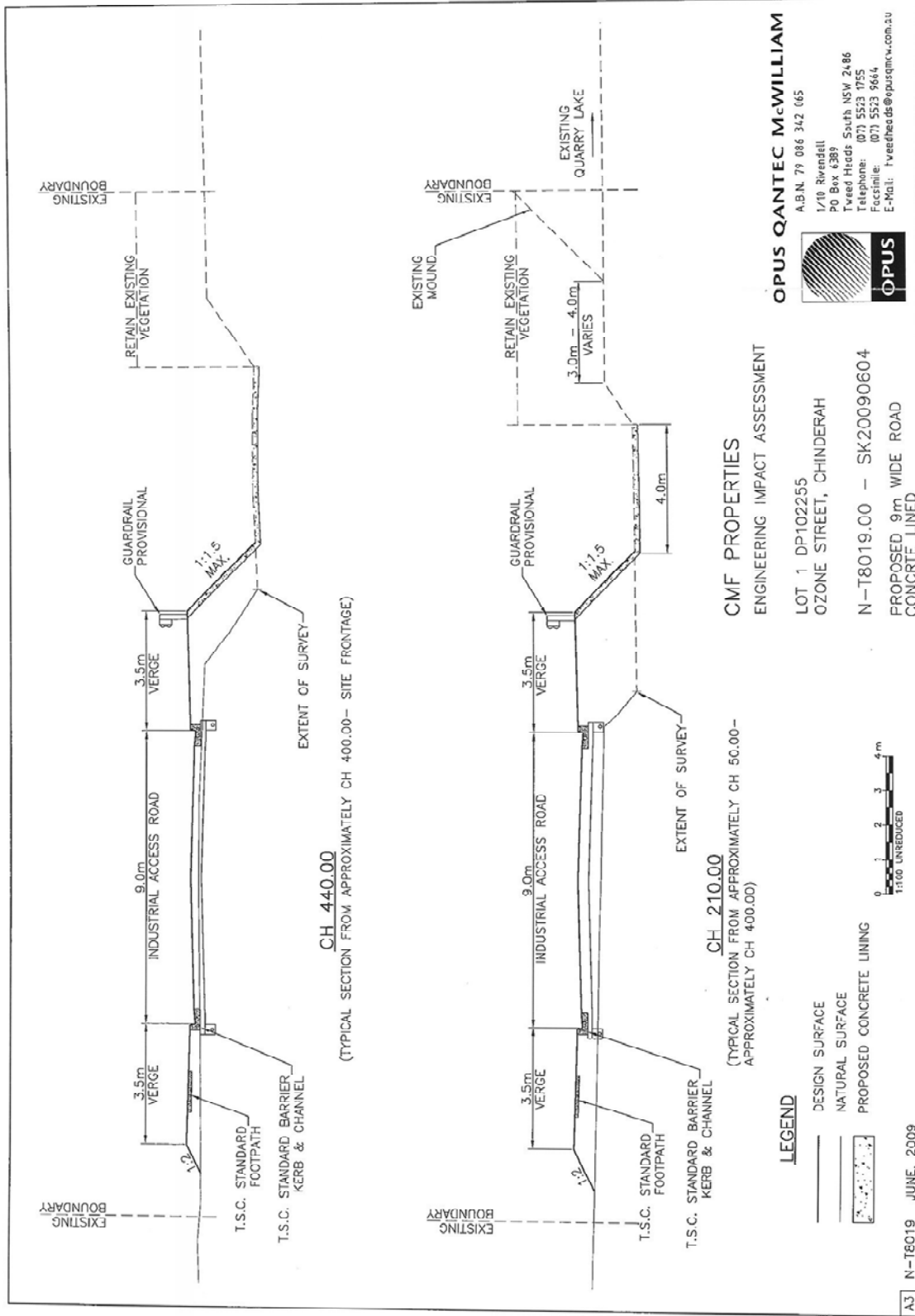


Tweed Shire Council

PO Box 816,
 Murwillumbah
 NSW 2484

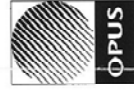
Tel: (02) 6670 2409
 Fax: (02) 6670 2483

DEVELOPMENT PLANS:



OPUS QANTEC McWILLIAM

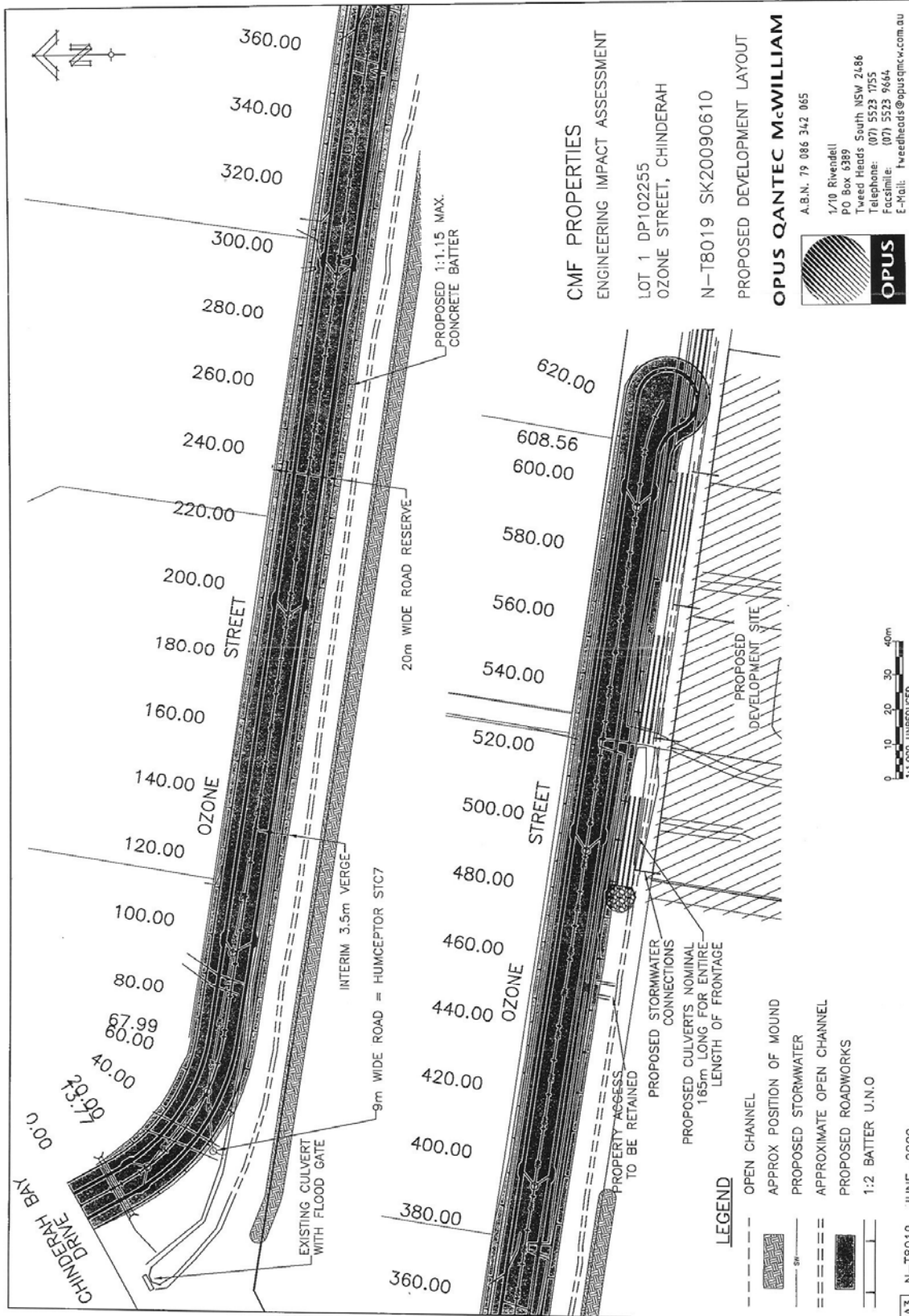
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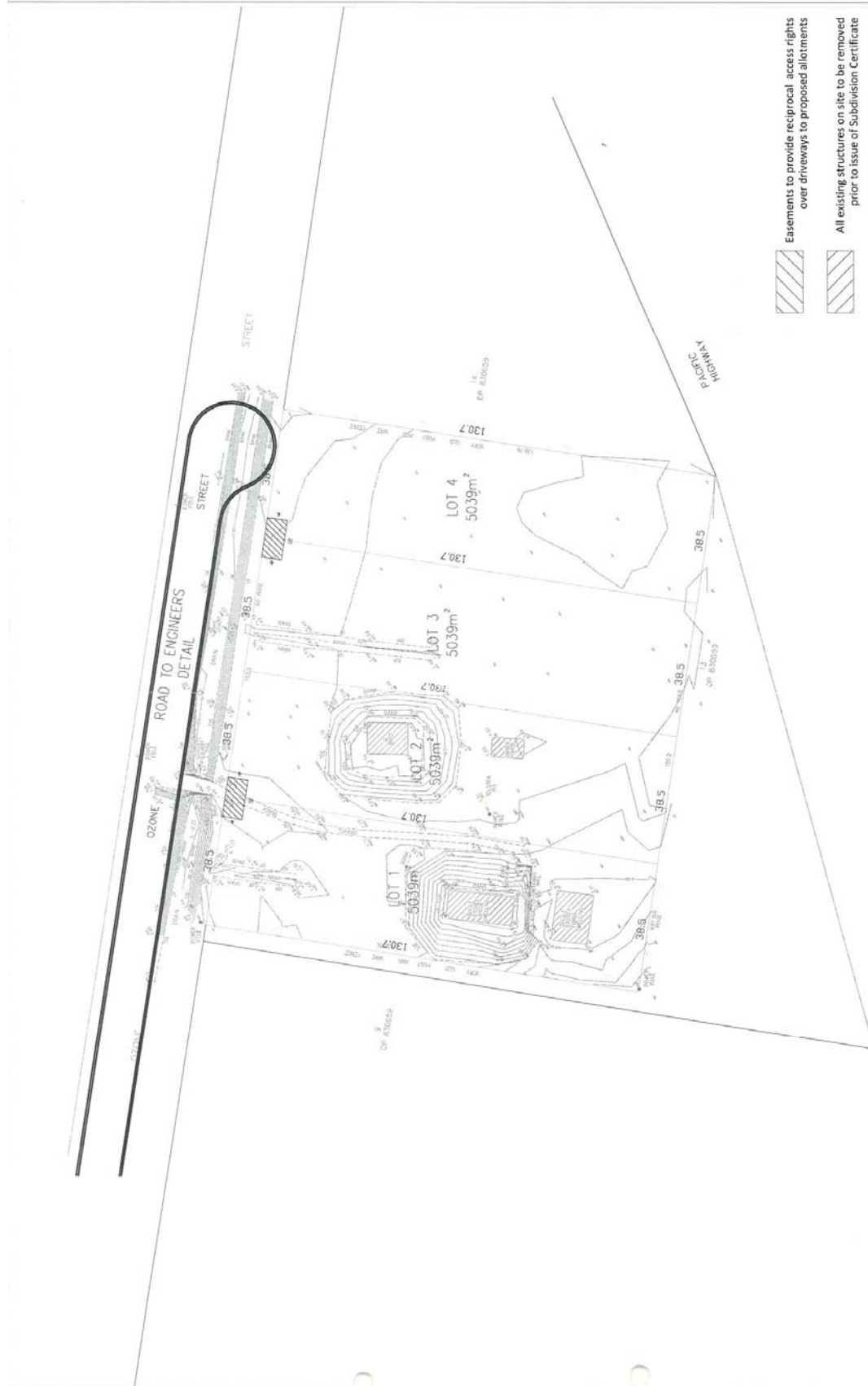




CMF PROPERTIES
ENGINEERING IMPACT ASSESSMENT



LOT 1 DP102255
OZONE STREET, CHINDERAH
N-T8019.00 - SK20090604
PROPOSED 9m WIDE ROAD
CONCRETE LINED

AS N-T8019 JUNE, 2009





-  Easements to provide reciprocal access rights over driveways to proposed allotments
-  All existing structures on site to be removed prior to issue of Subdivision Certificate

DRAWING TITLE	Proposed Subdivision Plan Re-Subdivision of Lot 1 in DP 102255 Ozone Street, Chinderah		
	CLIENT	CMF Properties	
SCALE	1:500 (P.A.)	DATE	October 2008
REV		DRWN	JP
		DRWN No.	01
		PROJ No.	40092A
NORTH 			
 Level 22/47 Gold Coast Highway Nobby Beach PO Box 205 OLD 4218 Telephone: 07 5526 1500 Fax: 07 5526 1502 Email: admin@planitconsulting.com.au			

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

Subject to a suitable compensatory offset package, the proposal is considered to be consistent with Clause 4, including Clause 4(d) which relates to sustainable economic development compatible with the environmental and residential amenity qualities of the Tweed.

Clause 5 - Ecologically Sustainable Development

The proposal (with a suitable compensatory offset for the loss of an EEC) is considered to be consistent with Clause 5 as the road to be constructed is a dedicated road reserve and opportunities exist for off-site compensation for vegetation loss.

Clause 8 - Zone objectives

The subject site is zoned 4(a) Industrial pursuant to the provisions of the TLEP 2000. The primary objectives of this zone are:

- *To provide land primarily for industrial development and*
- *To facilitate economic activity and employment generation.*

The proposal is consistent with both primary objectives as it seeks to capitalise on the site's land use zoning to provide for future industrial development (under separate development consent). This would in turn facilitate future economic activity and employment generation during both the construction and operational phases of the project.

Clause 15 - Essential Services

All essential services are available to the site, including connection to Council's reticulated water and sewer. Council's Water and Sewer Systems Engineer has indicated that the proposed method of water supply is satisfactory and that Council is prepared to accept a common sewer rising main in Council ownership, with each individual lot to have a private pressure sewer pump station. Separate S68 applications will be required to this effect.

Clause 17 - Social Impact Assessment

The proposal is not anticipated to generate significant social impacts aside from the potential future generation of employment opportunities, subject to development consent for future built form on the site.

Clause 19 – General (Subdivision)

This clause allows for the proposed subdivision of land zoned 4(a) Industrial with consent.

Clause 22 – Development Near Designated Roads

The site is located in proximity to the Pacific Highway which is an RTA classified road, however access to or from the highway is neither currently available or sought by the applicant. The proposed development is anticipated to have negligible impacts in terms of traffic safety on the classified road.

Clause 31 – Development Adjoining Waterbodies

Although the subject site is not located directly adjacent to the Tweed River, the existence of the stormwater drain (which experiences tidal flows) within the road reserve has prompted Council to assess the application against Clause 31.

Subject to the issuing of the required permits by NSW Fisheries and the Department of Environment, Climate Change and Water, and the recommended conditions of consent detailed in this report, the proposed development is considered to satisfy the provisions of Clause 31 in terms of adverse impact on the water quality or scenic quality of the Tweed River.

Clause 34 – Flooding

The subject site is flood prone, with a design flood level of 3.3m AHD. It is also identified as having a 'low' flood velocity. It is proposed to fill the site by approximately 0.5m (to RL2.0m AHD). This issue is discussed in further detail later in this report.

Clause 35 - Acid Sulfate Soils

The subject site (and road reserve) exhibits class 3 Acid Sulphate Soils (ASS) as per Council's GIS System. The applicant has submitted an Acid Sulphate Soils Management Plan, prepared by HMC Environmental Consulting. Council's Environmental Health Officer has reviewed this plan and concerns have been raised that there is not adequate site area to apply the proposed treatment method (neutralisation with agricultural lime) outlined in the plan. Conditions have been applied requiring the on-site contractor to liaise with Council's Environmental Health Officer prior to the commencement of work on the proposed road or drain, and requiring the preparation of a Water Quality Monitoring Program prior to commencement of work.

It is considered that the recommended conditions represent an appropriate solution in this regard.

Clause 39 – Remediation of Contaminated Land

The subject property is currently used for residential purposes, and has previously been used as a nursery and for cattle grazing. Council's Environmental Health Officer has indicated that no further consideration with regard to contaminated land is required.

Clause 44 – Development of Land Within Likely or Known Archaeological Sites

Clause 44 (1) permits consent to be granted for development on a site that has Aboriginal heritage significance or a potential archaeological site that is reasonably likely to have Aboriginal heritage significance if an assessment of how the development will affect the conservation of that site has been considered.

The applicant has stated the following:

“We are confident that the site is not within proximity to any known sites, furthermore, given that the matter is not a Part 3A project, a condition requiring cessation of works if any item is disturbed is considered acceptable. We will also accept a condition that requires us to have the site inspected prior to works commencing by representatives of the Tweed Byron Aboriginal Land Council”.

Such conditions have been applied. The applicant has also advised that they are in the process of obtaining an assessment from a local archaeologist which has not been supplied to Council to date.

As such, Council has applied a deferred commencement condition to ensure that Aboriginal heritage significance issues are appropriately addressed which will in turn satisfy Clause 44.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 15: Rivers, streams and wetlands

Inclusive of compensatory habitat works to the satisfaction of Council (deferred commencement of consent to enable this to occur) the proposal is considered to be consistent with Clause 15.

Clause 32B: Coastal Lands

The NSW Coastal Policy applies to the subject site and Council must therefore take into consideration the NSW Coastal Policy, the Coastline Management Manual and the North Coast: Design Guidelines.

Broadly, the proposal does not contravene the provisions of the above documents, should a suitable compensatory package be provided.

The proposal will not impede public access to the foreshore and will not overshadow the foreshore.

Clause 47: Principles for Commercial and Industrial Development

Clause 47 (2) specifies that before granting consent for industrial development, Council must consider that land used for such development should be located where it can be adequately serviced by the transport system and is accessible from urban areas. At this stage, consent is sought for subdivision only, with industrial development to occur under separate application in the future. The subject site is not adequately served by the transport system at present for the purposes of this application, hence construction of the proposed road to the required 9m minimum standard.

However, if the proposal is favourably supported, the new road will provide adequate access for large vehicles in Ozone Street, Chinderah Bay Drive and Chinderah Road onto the existing highway interchange, which is considered to meet the provisions of Clause 47 (2).

Clause 81: Development adjacent to the ocean or a waterway

This clause specifies that Council must not consent to an application for development on land within 100m of the ocean or any substantial waterway unless satisfied the development does not limit access to available open space, does not detract from the amenity of the waterway and is consistent with any foreshore management plan applying to the area.

In this instance, the proposed subdivision does not limit access to open space (whilst it does propose to create a road in a road reserve area presently utilised by residents as open space). Without a suitable compensatory offset, the proposal is considered to have the potential to detract from the amenity of the waterway by removing a stand of established vegetation (the EEC) and clearing all site vegetation. However, the applicant has provided general agreement to the provision of a habitat compensation plan to offset the vegetation loss and the proposal is therefore considered to be consistent with Clause 81. There is no foreshore management plan applying to the area.

SEPP No. 14 - Coastal Wetlands

The existing drain terminates into an area of the Tweed River identified under SEPP 14 (and also classified as a sensitive coastal location under SEPP 71) and part of the proposed road works (in particular, upgrading of the Chinderah Bay Drive/Ozone Street intersection) are located within 50m of SEPP 14 wetlands.

Consideration of SEPP 14 only occurs if the subject site is covered by the policy, which in this case it is not. Subject to conditions to prevent sediment/runoff impacts into the Tweed River, the proposed development is considered to generally accord with SEPP 14.

SEPP No 71 – Coastal Protection

The subject site is covered by SEPP 71, although the site is not identified as a sensitive coastal location under the Policy.

Subject to the provision of compensatory habitat for the significant vegetation to be lost from the site and protection in perpetuity of such, the proposal is considered to be consistent with the matters for consideration under SEPP 71.

In particular the proposal is considered to be consistent with the aims of the policy, will not affect access to any coastal foreshore areas and is considered to be suitable for the subject locality due to the site's industrial zoning and proximity to the Pacific Highway and other industrial development. The proposal is not considered to impact adversely on the coastal foreshore, will not create overshadowing and is not considered to detract from the scenic qualities of the New South Wales coast.

The applicant has demonstrated (via the 7-Part Test) that the proposed vegetation clearing will not impact significantly on threatened flora or fauna species and has indicated their intention to engage in compensatory works to offset the vegetation loss at the rate of 2:1. No wildlife corridors are mapped on the subject site or along the Ozone Street road reserve. The subject site is located outside of the coastal erosion zones under the NSW Coastal Policy and coastal processes will not impact on the proposed development. The proposal does not have the potential to create conflict between land based and water based activities.

With regard to Clause 8(l), the applicant has noted that they are confident that the site is not within proximity to any known archaeological sites. Applicable conditions of consent have been applied in this regard, including the requirement to cease works if any item is disturbed and the need to have the site inspected prior to works commencing by representatives of the Tweed Byron Aboriginal Land Council. More importantly, a deferred commencement condition has been incorporated to ensure that the applicant has adequately addressed all issues related to the potential impact of the proposed subdivision and associated road works. The deferred commencement condition incorporates the requirement to consult with the Tweed Byron Local Aboriginal Land Council and associated stakeholders and include appropriate mitigation/management measures.

In terms of cumulative impact, it is considered that the development will no longer pose a significant impact to the EEC community due to damage being compensated on a 2:1 (two (unit areas) gained for one lost basis).

If the above mentioned deferred commencement conditions can be satisfied, the proposal is considered to be consistent with the matters for consideration under SEPP 71.

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

There are no draft EPI's pertaining to the subject site.

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

Tweed Development Control Plan

A2 - Site Access and Parking Code

At the subdivision stage, the provision of car parking is not required. The applicant will be required to demonstrate compliance with DCP A2 at the time of lodgement of an application for the future development of each site.

As the proposal meets the minimum lot size and lot frontage (width) controls for industrial subdivision, it is considered that future development will be able to demonstrate compliance with parking/access/manoeuvrability requirements under this DCP.

A3 - Development of Flood Liable Land

The subject site is flood prone to a design level of RL 3.3m AHD. Ground levels on the site range from RL1.42m to RL1.82m. Approximately 0.5m of fill is proposed to be imported onto the site.

Council's Planning and Infrastructure Engineer has provided the following comment in this regard:

"The site is flood liable, with ground levels ranging from RL 1.42m - 1.82m AHD. Design flood level in this part of Chinderah is RL 3.3m AHD.

Approximately 0.5m of fill is intended to be imported onto the site, to achieve levels of approximately RL 2.0m AHD, which is generally consistent with the level intended for Ozone St. This filling is necessary to regrade the site and to provide surface and sub-surface drainage to the future Ozone St drainage system. The filling is therefore acceptable under DCP- A3.

DCP-A3 states that "structures and permanent improvements within the industrial zoned land are to be restricted in site coverage to retain a minimum of 50% of the area available for flood flow". No structures are proposed for the subject subdivision DA, however an 88B restriction should be placed on the title for each lot so that future development will comply".

Appropriate conditions of consent have been applied, including the requirement for a Section 88B restriction to user over each new allotment to limit site coverage of structures and permanent improvements to retain a minimum of 50% of the area available for flood flow for future development.

Therefore, the proposal is considered to be consistent with DCP A3.

A5-Subdivision Manual

This policy contains guidelines for subdivision development. Relevant to this application, the policy specifies that subdivided land in the 4(a) Industrial zone must meet the following criteria:

- Have a minimum lot size of 2000m²;
- Be capable of containing a 10m x 15m building platform; and
- Have a minimum of 30m road frontage.

The proposal is consistent with the above criteria.

In addition, consideration is required of the physical and environmental constraints of the site, the degree of landforming, stormwater and drainage and buffers as follows:

Physical constraints

The subject site is relatively unconstrained in physical terms with the exception of the unformed section of Ozone Street which has hindered access. The site is relatively flat and does not contain any waterways (besides the adjacent open drain) and the proposal does not necessitate significant changes to the natural landform.

Environmental constraints

The site contains established native vegetation and the open drain within the Ozone Street road reserve supports an Endangered Ecological Community. The site is unlikely to be contaminated based on historical landuses, is not at risk of land slip or subsidence and is not bushfire prone. The site does exhibit class 3 ASS and appropriate conditions have been applied in this regard by Council's Environmental Health Officer.

A 7-Part Test has been carried out by the applicant which has indicated that the proposed vegetation clearing will not have a significant effect on threatened species or their habitat. Notwithstanding, the applicant has acknowledged the presence of EEC vegetation and appropriate compensation measures will be undertaken as discussed below.

The proposal is considered to be consistent with the NSW Coastal Policy.

Significant Vegetation

As mentioned, the site and the road reserve both support significant vegetation. The need for compensatory works to offset the loss of this vegetation has been acknowledged by the applicant and negotiations have commenced between the applicant and Council as to the development of a plan for compensatory habitat works for an off-site area of the same or like vegetation communities. The plan will require a minimum 2:1 compensation outcome, i.e. at least 1ha of the same vegetation community to be provided in an area set aside for conservation as an offset for loss of around 0.5ha of habitat. Appropriate deferred commencement conditions have been applied in this regard.

This is considered to satisfy this section of DCP A5.

Aboriginal Heritage or Cultural Items

The applicant has noted that they are confident the site is not within proximity to any known sites and are presently preparing an assessment in this regard (not received by Council to date).

A deferred commencement condition has been applied in this regard to ensure that Aboriginal heritage significance issues are appropriately addressed.

Should the applicant satisfy the deferred commencement condition, this section of DCP A5 is considered to be satisfied.

Landforming

The application proposes minor earthworks to fill the site to RL 2.0m AHD. The site at present is relatively flat with two dwellings existing on raised earth pads. Apart from the removal of the existing vegetation, the proposed filling works will not significantly alter the natural landform and is not considered to impact upon any nearby properties in this regard.

Issues relating to access, stormwater, drainage, waterways and flooding are detailed further later in this report.

The proposed development, inclusive of the compensatory habitat plan and protection in perpetuity of such land is considered to be generally consistent with DCP A5.

A11-Public Notification of Development Proposals

The proposed development was notified for a period of two weeks from 21 January 2009 to 5 February 2009. During this time, one (1) submission was received, which raised issues such as increased traffic generation, amenity impacts and the issuing of orders by Council for the removal of unlawful structures constructed by residents of the Caravan Park over the road reserve. These issues will be addressed later in this report.

A13-Socio-Economic Impact Assessment

The proposal is not considered to create significant social or economic impacts

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

Clause 92(a) Government Coastal Policy

The land is identified under the Coastal Policy. However, the site is not located within the Coastal Erosion Zones, and is unlikely to be affected by the coastal processes and the proposal will not overshadow any foreshore reserves or restrict public access to the coast. Therefore, the proposed development is not considered to be in conflict with the policies and strategies contained in the coastal policy.

Clause 92(b) Applications for demolition

The proposal requires the demolition of all existing site structures. The applicant has not submitted a demolition plan and subsequently it is recommended that

demolition form part of separate development consent. Appropriate conditions of consent have been recommended to control demolition activities.

(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

Context and Setting

Inclusive of the compensatory habitat scheme, the proposal is considered to be generally consistent with the context of the subject locality which exhibits mixed zoning, including residential, waterfront enterprise and industrial. The site is located in proximity to the established Chinderah industrial area, the Pacific Highway and nearby industrial developments including Action Sands (sand mining) and a recently approved warehouse for boat manufacture and sales in Chinderah Bay Drive.

The proposal is considered to be an appropriate development to occur in the context and setting of the subject site.

Access, Transport and Traffic

Council's Development Assessment Engineer has provided the following comment pertaining to the proposed access arrangements for the development:

"Access to the proposed subdivision is from Chinderah Bay Drive and via new road construction through the existing Ozone Street road reserve. Ozone Street is currently a partial gravel track with the Tweed Heritage Park adjoining the length of the road reserve.

It is noted that a number of fences, gates, furniture and vehicles are located within the Ozone Street road reserve, blocking access through the reserve. These structures will be required to be removed to physically construct the road.

Chinderah Bay Drive and Ozone Street both have flat vertical and horizontal alignments. Chinderah Bay Drive has a 10m wide pavement in good condition with no kerb & gutter.

A formalised intersection will be created with the proposed upgrade of Ozone Street. The intersection of Ozone Street is located towards the end of Chinderah Bay Drive. Sight distance at the intersection is considered adequate.

Current access to the property is via a gravel track, approximately 3m wide and 90m in length. Access to the gravel track is from Anne Lane.

Proposed access to the 4 lot subdivision is via a new road approximately 630m in length constructed to an urban wider access street standard. The proposed road will be accessed via Chinderah Bay Drive, following the Ozone Street road reserve alignment and terminating in a cul-de-sac.

The application has lodged two options in relation to the road standard. The options are as follows:

- *13m wide pavement within a 20m wide road reserve with kerb & gutter (industrial type road standard designed for a maximum of up to 8000 vehicles per day)*
- *9m wide pavement within a 17m wide road reserve with kerb & gutter (access street bus route road standard designed for a maximum of up to 3000 vehicles per day)*

The rationale for the 9m wide pavement is that a reduced width will require less construction works to create a level platform for the road and associated drainage. A 9m wide pavement within a 17m wide road reserve is considered adequate to service the 4 lot industrial subdivision.

An existing drain is located on the southern side of the road reserve and earthworks for both road widths will be required.

The actual width for the Ozone Street road reserve is 30.18m.

Council's road design specifications for a cul-de-sac specify that the maximum length is 120m. Due to site constraints which include the location of the Pacific Highway roundabout to the east of the site, it is considered that the 630m road is acceptable".

Notwithstanding the environmental issues associated with the loss of an EEC (and the proposed method of compensation for such), the proposed 9m wide road (within a 17m reserve) is considered to be appropriate for the proposed development and suitable conditions of consent have been applied in this regard.

Traffic Generation

Council's Development Assessment Engineer and Traffic Engineer have provided the following comment:

The 4 lot industrial subdivision will not affect the surrounding road network.

The construction of Ozone Street to an urban wider access street provides a level of road standard capable of supporting a high vehicle volume.

Please note the following comments from Council's Traffic Engineer: "Some 680m of Ozone Street will need to be constructed to Council's standards of 9.0m rather than 13.0m is acceptable for this construction.

I calculate proposed traffic generation at about 129 vpd (56 vpd is stated in the report) and peak hour at about 23 vph. The traffic volume can be accommodated within the existing road capacity of Chinderah Bay Drive.

Only BAL intersection treatment will be required at the proposed Ozone Street/ Chinderah Bay Drive intersection.”

The proposed development is considered to be appropriate from a traffic generation perspective, subject to the imposition of a condition requiring BAL intersection treatment (as above) and notwithstanding potential amenity impacts for nearby residents as is addressed further in this report.

Flora and Fauna

The applicant's flora and fauna survey has specified the following:

“Whilst the roadway upgrade proposal is considered unlikely to significantly affect native vegetation communities, fauna and associated habitat it will result in the minor loss of local habitat for native species through tree removal, alteration to the existing drainage channel and construction of the new roadway and associated trunk infrastructure (i.e.: communications, sewer, stormwater etc). In this regard recommendations have been included in this report regarding the construction management, water quality controls and offsite revegetation to offset loss of vegetation”.

Council's Ecologist has noted the following:

“Negotiations have commenced with the developer in relation to provision of compensatory habitat for the significant vegetation to be lost from the site. Agreement in principle has been reached that restoration and protection in perpetuity of an off-site area of the same or like vegetation communities will be undertaken to provide a minimum of 2:1 outcome, i.e. at least 1ha of the same vegetation community to be provided in an area set aside for conservation as an offset for loss of around 0.5ha of habitat.

The vegetation is presently contained along a linear drainage line and thus is long and narrow in shape, leaving it subject to degradation through a long edge to area ratio and contained within road reserve and land zoned for development, thus a conservation benefit is likely upon completion of the restoration and protection of the offset site. Sites for compensation will be chosen based on larger overall reserve size and rounder shape to reduce degradation arising from edge effects, thus chance of long-term survival.

A number of suitable sites are under discussion, in relation to suitable public land parcels (applicable because the road reserve is public land) but agreement has yet to be reached on particulars”.

It is considered that the matter can be approached through the application of a deferred commencement condition. Additional conditions have also been applied relating to construction management and water quality controls as identified by the applicant in the flora and fauna study above.

(c) Suitability of the site for the development

Department of Climate Change and Water and NSW Fisheries Permits

In accordance with the definitions relating to watercourses within the Water Management Act 2000, the Fisheries Management Act 1994 and Tweed LEP 2000, the drainage line must be assessed in the same way as a natural watercourse, thus the proposed development requires permits under both the Water Management Act 2000 and the Fisheries Management Act 1994. Neither of these have been obtained to date as the applicant did not choose to nominate the application as integrated development in this regard. Should the application be favourably supported, the applicant will be required to obtain both required permits/approvals prior to the commencement of any works. It is noted that as neither Department has yet had the opportunity to review the proposal, there is no guarantee that the required permits would be issued.

Stormwater Drainage

Council's Planning and Infrastructure Engineer has provided the following comment pertaining to drainage from the site:

"The proposed construction of Ozone St from Chinderah Bay Drive, particularly the cul-de-sac head, will encroach into the existing drainage channel that runs along the road reserve to the Tweed River. It is also intended to replace the open drain with 4 x 1200mm diameter pipes for the full frontage of the site, to facilitate access to the subdivided lots.

The road design shows that drain realignment works to accommodate the standard road cross section may impact on an existing earth bund along the southern edge of the road reserve. It is assumed that this bund is in place to protect the caravan park residents to the north from noise from the sand quarry to the south of the road reserve. This bund must be maintained, and may involve works on the quarry site, therefore requiring owners consent.

No transverse drainage is shown in the design of Ozone St. There are a number of minor open drains that currently discharge runoff from properties to the north to the main Ozone St drain, which will need to be catered for in detailed design".

Appropriate conditions of consent have been applied, including the submission of a S68 Stormwater application, a requirement for the maintenance of the earth bund and owners consent for any works encroaching into adjacent private land.

Earth Bund

The existing earth bund along the southern boundary of the road reserve serves as an acoustic barrier between nearby caravan parks and the Action Sands development. Conditions will be applied so as to maintain the integrity of the bund during road construction.

Surrounding Landuses/Development

Considering the industrial zoning of the subject site and the fact that development of the site for any purpose would facilitate the upgrade of Ozone Street, the proposal is considered to be appropriate in the context of the wider Chinderah locality.

Water

Council's Water and Sewer Systems Engineer has reviewed the proposal in regard to water supply. The following comment has been received:

"The application proposes the construction of a 150mm diameter water main to service this development. It is connected to an existing 150mm main at the intersection of Chinderah Road, Walsh Street and the Pacific Highway. The calculation in the application relates to a potential consumption on the basis of an average demand scenario, but has not included an assessment of the fire flow that may be necessary.

The proposed main complies with the minimum requirement for size servicing industrial properties and is likely to be able to deliver the required fire flows although no calculation has been carried out to demonstrate this.

The water supply proposed is therefore considered satisfactory"

Appropriate conditions have been applied in this regard.

Sewer

Council's Water and Sewer Systems Engineer has reviewed the proposal in regard to sewer and indicated that the Rutile Street Pump Station is capable of handling the extra loading generated by the proposal. In terms of connection to the pump station, Council is prepared to accept a suitably sized common sewer rising main in Council ownership with each individual lot to have a private pressure sewer pump station installed in the front of each lot.

For each lot serviced by the pressure sewer system, a capital contribution of \$14, 800 shall be paid by the applicant to Council to enable installation of each pump station and a positive covenant will be placed on each lot that will permit Council access for the installation, maintenance and replacement of the pump station, the provision of electricity by the landholder and the placement of the control box and alarm system on an exterior wall of the future structure.

The above has been applied as a condition of development consent (via an 88B restriction to benefit Council) and the \$14, 800 fee per lot incorporated within the total sewer S64 contribution charge.

The developer will be required to obtain s68 approval to install and operate each of the pump stations from Council's Environmental Health section. Subsequent owners will then have 60 days under the Act to lodge an application to transfer the approval to operate the pump station.

Appropriate conditions have been applied in this regard.

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

The proposal was notified under DCP A11 for a period of 14 days. With one (1) submission was received. The submission raised the following issues:

Issue	Response
<p><u>Vehicle count too low</u></p> <ul style="list-style-type: none"> • Application states 56 vehicle trips/day based on 28 employees per hectare, the number of daily trips would be higher given the nature of the subdivision (industrial) and vehicles would be of an industrial/commercial nature rather than passenger vehicles; • Will create increased dust, noise, vibration and visual pollution. 	<p>Council's Traffic Engineer has reviewed the proposal in this regard and confirmed that the submitted 56 trips/day is too low: <i>I calculate proposed traffic generation at about 129 vpd (56 vpd is stated in the report) and peak hour at about 23 vph. The traffic volume can be accommodated within the existing road capacity of Chinderah Bay Drive.</i> The proposed road is to be constructed to the correct standard to enable use by large vehicles.</p> <p>It is acknowledged that dust and noise are potential temporary outcomes of this proposal, however these issues are considered adequately resolved via conditions of consent.</p> <p>This issue is considered to be adequately resolved.</p>
<p><u>Proposed road too narrow</u></p> <ul style="list-style-type: none"> • 9m is too narrow to account for size of vehicles to and from subdivision (ie: semi-trailers). 	<p>Council's Development Assessment Engineer has reviewed the application in this regard and confirmed that a 9m road (within a 17m wide reserve) is appropriate for the proposed development.</p> <p>This issue is considered to be adequately resolved.</p>
<p><u>Presence of structures in road reserve</u></p> <ul style="list-style-type: none"> • Construction of road doesn't consider existing structures built by Caravan Park residents that encroach into the road reserve • Council must initiate orders to have such structures removed; • Removal of structures/disturbance of residents' homes would affect their amenity and enjoyment of life. 	<p>Site inspection has indicated a number of unlawful structures encroaching onto the road reserve. The construction of the road will necessitate the removal of these unlawful structures on Council owned land.</p> <p>As such, Council's Compliance Officer will likely be involved with initiating the removal of them. Although unfortunate, the unlawful structures will need to be removed, despite any potential impacts to the amenity of residents.</p>
<p><u>Traffic management would be improved via access immediately off roundabout</u></p> <ul style="list-style-type: none"> • Road access from roundabout could terminate in a cul-de-sac in front of subject property; 	<p>Access off roundabout is not proposed and it is unlikely that the RTA would support such a proposal given the close location of the site to the roundabout and highway.</p>

<ul style="list-style-type: none"> This would obviate noise and amenity disturbances to Caravan Park residences. 	<p>It is not possible to know the potential of noise and amenity impacts at this stage as the end uses of each of the allotments is not known. Until this point it is not possible to theorise as to what volume of traffic may use the new road, with the exception of applying conditions relating to the development being conducted in a manner so as not to cause disruption to the amenity of the locality by way of the emission of noise, dust and odours or the like.</p>
<p><u>Socio-economic characteristics of Caravan Park residents</u></p> <ul style="list-style-type: none"> Large majority of residents are elderly; Large majority if residents' sole source of income is a social security payment and most have limited financial resources to be able to relocate. 	<p>Council officers are not of the opinion that the proposal will result in residents of the caravan park needing to relocate. The proposal is not considered to impact on the ability of residents to enjoy their own homes.</p>

(e) Public interest

Subject to the applicant satisfying the deferred commencement conditions, the proposed development is considered to be in the public's interest.

OPTIONS:

1. Approve the application in accordance with the recommended conditions for deferred commencement.
2. Refuse the application and defend the appeal in the Land & Environment Court. Any resolution for refusal needs to be supported by valid reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has lodged a Deemed Refusal Class 1 Appeal with the Land and Environment Court. Should Council approve the application it is anticipated that the appeal would be withdrawn.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed development is located on a site zoned for industrial development and appropriate conditions of consent have been applied to ensure that the proposal meets all applicable legislative requirements, subject to the deferred commencement conditions (Habitat Restoration Plan on suitable compensatory site and Aboriginal cultural heritage significance assessment) being satisfied.

Subject to satisfaction of the deferred commencement conditions, the proposal is considered to warrant approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.
