

# MINUTES OF THE DEVELOPMENT ASSESSMENT PANEL HELD FRIDAY 24 JANUARY 1997.

**Present:** Messrs Garry Smith, Brian Donaghy, Paul Morgan, Rick Paterson, Mark Thomas and Darryl Anderson

**Minutes:**

**R Paterson**

**B Donaghy** **RESOLVED** that the Minutes of the Meeting held on 22 January 1997 be confirmed as an accurate record of the proceedings of the Meeting.

## 1. **PROPOSAL TO STOCKPILE SAND AND LANDSCAPE SUPPLY MATERIALS AT LOTS 5 AND 6 DP 565926 PACIFIC HIGHWAY, CHINDERAH**

**PF4030/2150 PT1**

**Applicant:** Action Sands Pty Ltd  
**Owner:** Action Sands Pty Ltd  
**Location:** Lot 5 and 6 DP 565926 Pacific Highway, Chinderah  
**Zoning:** 1(b2) Agricultural Protection zone  
**Est Cost:** \$20,000

On the unanimous decision of the Panel that :

- A. The applicant be advised that it is Councils intention to determine development application 96/248 by way of consent subject to the conditions outlined in "B" below" and subject to the applicant entering into a "Deed of Agreement" with Council based on Section 94(5) of the Environmental Planning and Assessment Act, 1979 requiring the payment of the following contributions prior to formal determination of the application:

"Payment of a road maintenance contribution levy of 2.5 cents per tonne of material removed from the site by road transport per kilometre travelled from the subject site to the site of delivery (2.5 cents/tonne/km) as a contribution towards the cost of maintaining the local road network.

This levy will be increased annually at a rate equivalent to the New South Wales CPI rate of increase.

The levy payment is to be made on a quarterly basis (3 months) and must include suitable documentary evidence relating to the quantity of material removed and the distance hauled."

- B. Subject to "A" above, the development application 96/248 submitted by Actions Sands Pty Ltd for stockpiling at Lot 5 & 6 DP 565926 Pacific Highway, Chinderah be approved subject to the following conditions:-

### **General**

1. The development shall be completed generally in accordance with the Environmental Impact Statement prepared by Martin Findlater & Associates dated 11 June 1996 and Drawing No 95024-01 REV A prepared by Martin Findlater & Associates dated 10 June 1996, accept where varied by these conditions.

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2. The storage and supply of any material that is not solely a result of the dredging operations associated with development consent 91/281 or as a result of site preparation works as a result of this consent is prohibited. The storage of landscape materials that are the result of mixing with materials that need to be imported to the site is prohibited.
3. The development shall be completed within 20 years of the commencement of works associated with development consent 91/281.
4. Following completion of the operations, the site is to be rehabilitated including the replacement of topsoil to the satisfaction of the Director, Development Services.
5. The bund wall is to be constructed to a height of RL 5.0m AHD and is to be grassed and landscaped prior to any stockpiling occurring on the site. The maximum height of the stockpiled material shall not exceed RL 5.0m AHD.
6. Compliance with all requirements of the Environment Protection Authority.
7. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within the subject property. All associated costs to be borne by the applicant.
8. Prior to the commencement of any work on site, Lots 5 & 6 DP 565926 are to be amalgamated into one (1) lot under the one (1) title. The plan of subdivision is to be registered with the Lands Title Office prior to the commencement of any work on the site.
9. Landscaping is to be carried out in accordance with the submitted landscaping plans maintained to the satisfaction of the Director, Development Services.
10. Compliance with all requirements of Council's Environment and Community Services Division, specifically including the following matters:
  - (i) All of the mitigating measures and safeguards contained within the Environmental Impact Statement are to be implemented in full by the operators of the facility.
  - (ii) All runoff from the proposed operation is to be collected and directed to stockpile irrigation or to the main pond via impermeable drains.
  - (iii) Prior to any material leaving the site the material is to be sampled and tested for Net Acid Generating Potential (NGAP) and electrical conductivity in relation to pH at a rate of one (1) sample per 1000m<sup>3</sup>.
  - (iv) Material is not to leave this site unless sampled in accordance with Condition 10(iii) and demonstrated to be within the following limits.
    - \* NGAP < 0kg H<sub>2</sub> SO<sub>4</sub>/m<sup>3</sup>
    - \* Electrical Conductivity < 3.0mS/cm in 1:5 soil to water suspension.
    - \* pH > 5.5 in 1:5 soil to water suspension.
  - (v) Further testing of the existing "brickies" sand stockpiled on site is to be carried out in accordance with conditions 10(iii) and 10(iv), prior to leaving the site.

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- (vi) All records of sampling are to be retained for inspection and investigation by Council's Environment and Health Services Unit upon request.
  - (vii) The site is to be engineered and maintained to avoid water standing for extended periods of time.
  - (viii) The drains to the pond are to be constructed in a fashion to drains quickly and avoid isolated ponding.
  - (ix) If routine inspection by Councils entomological unit finds any mosquito breeding on site, control with larvicide will be carried out with all costs being borne by the owner.
  - (x) All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.
  - (xi) The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust, fumes or the like.
  - (xii) Upon commencement of work on the proposed main stockpile, an irrigation/sprinkler system is to be installed on top of the stockpile and along the unsealed haulage roads within the site, to the satisfaction of the Director, Environment and Community Services.
  - (xiii) The irrigation system is to be capable to provide sufficient dampening of the entire stockpile and haulage roads during periods of traffic and/or high speed winds. The use of the bucket to dampen the roads is only to be used as an additional method.
  - (xiv) During periods of high speed wind, the stockpiles of other materials are to be covered so as to minimise the movement of dust and other particulates off site.
11. Compliance with all requirements of Development Consent 91/281.

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## 2. PROPOSED BOUNDARY ADJUSTMENT

GS4/96/139 S96/139

**Applicant:** Jim Glazebrook and Associates  
**Owner:** Ross and Elaine Hardy  
**Location:** Lot 6 DP 597520 and Lot 5 DP 256743 Cudgera Creek Road, Cudgera Creek  
**Zoning:** Part 1(a) Rural and Part 1(b2) Agricultural Protection  
**Est Cost:** Not applicable

On the unanimous decision of the Panel that :-

- A. The State Environmental Planning Policy No. 1 objection in relation to the 40ha minimum development standard in Clause 28(2) be supported and the Directors Concurrence be requested.

# AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD FRIDAY 24 JANUARY 1997

## 1. PROPOSAL TO STOCKPILE SAND AND LANDSCAPE SUPPLY MATERIALS AT LOTS 5 AND 6 DP 565926 PACIFIC HIGHWAY, CHINDERAH

PF4030/2150 PT1

**Applicant:** Action Sands Pty Ltd  
**Owner:** Action Sands Pty Ltd  
**Location:** Lot 5 and 6 DP 565926 Pacific Highway, Chinderah  
**Zoning:** 1(b2) Agricultural Protection zone  
**Est Cost:** \$20,000

### BACKGROUND

A development application has been received for the stockpiling of sand and landscape supply materials at Lots 5 & 6 DP 565926 Pacific Highway, Chinderah. The adjoining Lot 7 contains the land based facility operated by Action Sands Pty Ltd for the dredging of the Tweed River. This activity operates under Development Consent 91/281.

The applicant proposes to stockpile sand on Lot 5 which is removed from the dredge pond on Lot 7 DP 565926. It is proposed that the stockpile of sand on Lot 5 will be supplementary stockpile for sand from the land based activity on Lot 7. The total area of the stockpile will be approximately 1.5 hectares. The stockpile area of Lot 5 will be surrounded by a high bund wall approximately 3.6m high.

It is proposed that Lot 6 will be used for the stockpiling of landscaping based materials. This involves using the sand and topsoil from the site and mixing it with natural fibrous materials to produce garden mixes, mulches etc. It is proposed that the landscape materials will be supplied on a wholesale basis.

The proposed activities have been described in the Environmental Impact Statement as follows:

- Sand will be removed from the dredge pond in Lot 7 by dredge and hydraulically placed on Lot 5 in the area shown on Drawing 95024-01 and allowed to drain.
- Smaller stockpiles of sand and topsoil will generally be mechanically placed on Lot 6 from the land based activities of Lot 7.
- All runoff water will be returned to the dredge pond via open drains.
- Lot 5 will be prepared to receive the sand by stripping the topsoil and forming an earth bund to contain the pumped sand. The bund will be stabilised by seeding, grassing and vegetation planting. Perimeter landscaping and screen planting will continue.

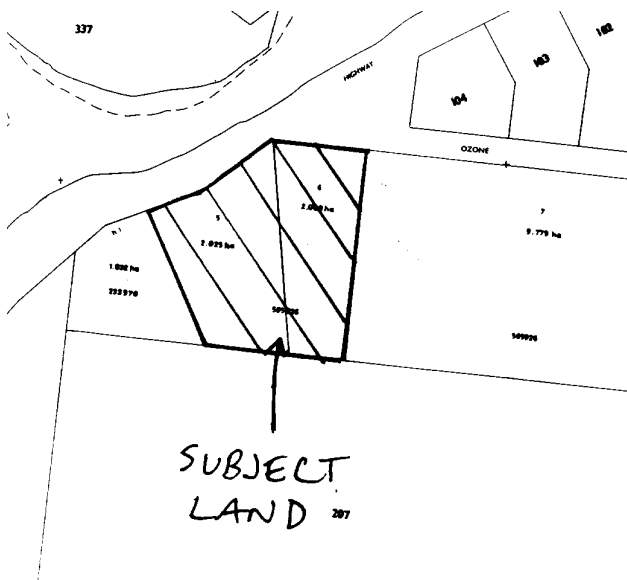
# AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD FRIDAY 24 JANUARY 1997

- The perimeter of the stockpiles and bund walls will be grassed to stabilise the materials and minimise any discharge of the stockpiles into the adjacent surface waters and dredge pond.
- Lot 6 will be prepared by stripping the topsoil and grassed layer to provide a working platform for working, processing and storing smaller piles of sand, soil and landscaping supplies. Mixing of finer materials is not recommended on high wind days, to minimise any potential impacts on surrounding land uses.
- Upon completion both lots will be reinstated to the natural surface level and grass established.
- Sand and materials from the stockpiles will be removed by loader and dump trucks.
- Access to the site will be via the existing sealed access road serving Lot 7.

The application was advertised and two (2) submissions were received.

The dredging operation is to be completed within 20 years of the date of commencement.

Figure 1



## SECTION 90 CONSIDERATIONS OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

A complete Section 90 assessment is attached to Council's file. Only those issued of significance are discussed below.

(a)(i) Tweed Local Environmental Plan 1987

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The subject land is zoned 1(b2) Agricultural Protection Zone. The stockpiling of material associated with the dredging land based facility is permissible with consent. However, the landscape material supply is a separate use as it requires importing additional material onto the site and is not simply ancillary to the dredging operation. This is defined as a bulk store and is prohibited

Clause 15 - The land has frontage to a designated road. The existing access from the Pacific Highway will be used and is satisfactory for the proposal. Less traffic uses this road now as the Chinderah Bypass has opened. Access matters will be further discussed in Section 90 (i)(j).

### North Coast Regional Environmental Plan 1988

Clause 12 - Impact on Agricultural Activities. The stockpiling of material should not affect the agricultural activities on other land in the locality. NSW Agriculture has raised no objections to the proposal.

Clause 15 - Rivers, streams and wetlands. The proposal should not result in any additional impacts on the Tweed River.

Clause 81 - Development adjacent to the ocean or waterways. The proposal will not affect access to the Tweed River or amenity of this waterway.

### State Environmental Planning Policies

State Environmental Planning Policy No.11 - Traffic Generating Developments. The application was referred to the Regional Advisory Committee in accordance with the provisions of this policy. The Committee raised no objections to the proposal.

- (iv) Development Control Plan No.5 - Development of Flood Liable Land. The land is subject to flooding. This issue will be discussed in Section 90(g).
- (b) The main environmental impacts associated with this proposal relate to potential acid sulphate soils, water quality, dust/wind blown, sand nuisance and potential noise impacts. These issues will be addressed separately below.

Acid Sulphate Soil - The Environmental Impact Statement concludes that exposure of any potential acid sulphate soil is not expected and provides supporting evidence in the form of soil sample pH levels from Lot 7. However, the Environment and Health Services Unit have recommended further testing prior to material leaving the site at a rate of 1 sample per 1000m<sup>3</sup>. This can be a condition of any consent.

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Water Quality. - It is proposed that all runoff water will be returned to the dredge pond via open drains. It will then be treated to EPA requirements before being discharged into the Tweed River.

Dust/Wind Blown Sand Nuisance. - The sand stockpile on Lot 7 has caused some nuisance to the residents of the Heritage Caravan Park in the past. In December 1995 consent was granted for an increase in the stockpile for a period of 12 months. A condition of this approval required the sand to be stockpiled at a level not exceeding the height of the bund wall and the installation of a watering system. Since this condition was implemented there is no record of any complaint.

The site had been inspected by an officer of the Environment and Health Unit who has advised that the dust minimisation measures that are currently in place appear adequate. These measures include the placement of irrigation lines on top of the stockpile and regular watering of the haulage loads. They consider similar controls would minimise the nuisance associated with the current proposal and the most crucial area for dust creation is the entry to the proposed stockpile used by trucks to collect the loads of sand and other unsealed haulage roads within the site.

A house is located on the site to the west of Lot 5 and is in close proximity to the proposed new stockpile site. The stockpile has the potential to be approximately 8 metres higher than the bund wall at the highest point. The site is exposed to the new Chinderah Bypass and stockpiles of this height would result in an unacceptable visual impact. It is acknowledged that landscaping will reduce this impact. However, due to the height of the stockpile the landscaping would take some time to be effective for alleviating both the visual impact of the stockpile and for mitigating dust nuisance. Therefore, it is recommended that if any consent is issued then the stockpiles should be limited to the height of the bund wall. Once the landscaping is established the applicants have the opportunity to lodge an amended or new application, depending on the scale.

Noise. - It is expected that the closest house would not be significantly affected by noise from the proposal due to the bund wall being located between the noise source and this house.

- (c) In the long term, once the proposed landscaping is established, the stockpiles should not have an adverse impact on the landscape or scenic quality of the locality. However, as discussed above, this may take some time and due to the exposed nature of the site the stockpiles should be limited in height to the height of the bund wall to reduce the visual impact of the proposal. The bund wall is to be grassed and landscaped.
- (d) No adverse social and economic effects are envisaged if proposed and recommended mitigation measures are implemented.

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- (e) & (f) The main stockpile is located on Lot 5 with the bund wall partially being constructed on Lot 6. Lot 5 has an area of 2.02 hectares and Lot 6 has an area of 2.1 hectares. The bund wall proposed to be approximately 3.6 metres above the ground level. This height has been interpreted from plans in the Environment Impact Statement. The height has not been specified in the Environmental Impact Statement. There has been problems in the past from interpretation of the bund wall height and therefore any consent should actually specify a height. The height as proposed would probably vary between approximately RL 4.4 and 4.8. The design flood level is RL 3.3m AHD. As previously discussed the height of the stockpile needs to be limited to that of the height of the bund wall for external appearance reasons.

Subject to compliance with proposed recommended mitigation measures the development is satisfactory in regard to size, scale, location etc. Lots 5, 6 & 7 would need to be amalgamated as a condition of any consent.

- (g) The site is subject to flooding. The Engineering Services Division have raised no concerns in relation to flooding. No other risk factors are apparent..
- (h) The impact on other developments in the locality in terms of noise and dust have already been discussed. The neighbour to the west also raised concerns in relation to mosquito and sandfly nuisance. Council's entomologist has examined the proposal and the objection and has advised as follows:-

*"I have had a look through Actions Sand's current EIS for the above proposed development in regard to objections by Mr Paranthoieni concerning midge and mosquito breeding potential at the site. Comments follow.*

*Present Problems:*

*I have noted saltmarsh mosquito breeding this season in standing water adjacent to access track and in heavy machinery wheel ruts on the present stockpile site, Lot 7. Mosquito breeding at the site would probably be insufficient to cause nuisance to adjacent residents. The present breeding appears precipitated by salt run-off from the sand piles. No increase in biting midge problems would be expected due to the operation.*

*Potential Problems:*

- 1) The above problems may be expanded and exacerbated if care is not taken to avoid shallow water ponding on the site.*
- 2) The pumped sand slurry run-off return through the various drainage channels may breed mosquitoes of brackish water ponds for extended periods in these drains.*

*Mitigating Measures.*

- 1) The site in general should be engineered to avoid water standing for extended periods.*



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*2) The return drains to the settling pond should be constructed in a fashion to drain quickly and avoid isolated ponding.*

*3) If routine inspection by entomological units finds any mosquito breeding on site, control with larvicide will be carried out with the cost borne by Action Sands”.*

The mitigating measures should be incorporated into any conditions of consent.

No other conflicts with adjoining developments are envisaged.

- (i) & (j) Access to the site exists from the Pacific Highway. This access is a right of way over Lots 5 and 6 to Lot 7. It has not been confirmed that this right of way benefits Lots 5 and 6. Regardless, the sites should be amalgamated prior to commencement of any work on the site.

The existing road system is capable of accommodating the traffic generated by this development. Development consent 91/281 requires the payment of a road maintenance contribution for material removed from the site by road. As the material will not be removed from Lot 7 by road a legal agreement needs to be made for the payment of a maintenance contribution for the quantity of material removed from Lots 5 & 6.

- (m) Landscaping is proposed around the perimeter of the site and on the bund walls. This is adequate. However, as previously discussed it will take some time to establish to be effective in visual screening and dust control.

- (n) Comments have been received from various government authorities and their submissions are summarised below:

\* NSW Agriculture - no significant agriculture issues.

\* RTA - Regional Advisory Committee has no objections.

\* Environmental Protection Authority:

(i) The pollution control licence for the discharge of waste water from the pond contains conditions that make it an offence to discharge material dredged from the Tweed River into the pond.

(ii) Testing carried out for Potential Acid Sulphate Soil (PASS) did not give an accurate indication of the acid generating potential of materials to be dredged or what controls will be in place to treat the existing soil stockpiles that contains elevated levels of PASS. Recommended testing prior to soil leaving site and further testing of the old “brickies” sand stockpiled on site.

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- (iii) Run off should be used for irrigation of stockpiles or to the pond. Impermeable drains should be used.
- (iv) Proposal to use water sprays is acceptable if operated to keep stockpiles damp.
- (v) May wish to require wind measuring devices so that mixing does not occur on strong wind days.
- (vi) Dust suppression for lime stockpiles and handling needs to be addressed in more detail.

Comments:

- (i) The applicant is pursuing this matter with the EPA. A condition of any consent will require compliance with all requirements of the EPA.
- (ii) The Environment and Health Services Unit have reviewed the EPA's letter and have recommended that further testing occurs before material leaves the site.
- (iii) This will be a condition of any consent.
- (iv) Noted
- (v) The proposal to mix landscape materials is prohibited. Therefore, this is not required.
- (vi) Additional information has been submitted and the Environment Health Services Unit is satisfied with this aspect of the proposal.

\* National Parks and Wildlife Services

- (i) Proposal is unlikely to be adverse to the interests of the NPWS in regard to natural heritage.
- (ii) Has not addressed the potential impact on cultural heritage matters. Recommended consultation with Aboriginal Land Council.

Comments:

The applicant has now consulted with the Aboriginal Lands Council and this aspect is satisfactory.

- (o) If mitigation measures are implemented the existing and likely future amenity of the locality will not be significantly affected. The long term future will not be affected as the dredging operation as limited to 20 years after commencement.

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- (p) Two (2) submissions were received. One from the Heritage Caravan Park and the other from a solicitor acting for the owner of the adjoining Lot 1 to the west. These submissions are summarised below:

## Heritage Caravan Park

- \* Applicant has never complied with the 5000m<sup>3</sup> limit for the storage of sand on Lot 7.

### Comment:

A temporary increase was granted which expired in December 1996. Council is following this issue separately

- \* Dust nuisance will increase

### Comment:

See comments made in Section 90(b) above.

## Mr Paranthoiene

- \* Increased activity by sandflies and mosquitoes

### Comment:

See comments made in Section 90(h) above.

- \* Increase traffic and activity will result in increase noise and traffic levels.

### Comment:

The bund wall between the house and the activities should alleviate likely impacts.

- \* No realistic way to cover sand stockpile to prevent nuisance from windblown sand.

### Comment:

See Section 90(b).

- \* Decrease in property value

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Comment:

This is a difficult aspect to assess. It is not a matter that Council can consider under Section 90 of the EPA Act, 1979.

**COMMENTS:**

The application raises a number of issues particularly in relation to the effects on residents in the locality and visual impact. As discussed in the Section 90 assessment above the impacts can be mitigated if recommended measures are implemented.

The application has been assessed by the Environment and Community Services Division and Engineering Services Division and no objections have been raised to the proposal.

Having regard to the above assessment it is recommended that the application be approved subject to the following conditions.

**RECOMMENDATION**

That:

- A. The applicant be advised that it is Councils intention to determine development application 96/248 by way of consent subject to the conditions outlined in "B" below" and subject to the applicant entering into a "Deed of Agreement" with Council based on Section 94(5) of the Environmental Planning and Assessment Act, 1979 requiring the payment of the following contributions prior to formal determination of the application:

"Payment of a road maintenance contribution levy of 2.5 cents per tonne of material removed from the site by road transport per kilometre travelled from the subject site to the site of delivery (2.5 cents/tonne/km) as a contribution towards the cost of maintaining the local road network.

This levy will be increased annually at a rate equivalent to the New South Wales CPI rate of increase.

The levy payment is to be made on a quarterly basis (3 months) and must include suitable documentary evidence relating to the quantity of material removed and the distance hauled."

- B. Subject to "A" above, the development application 96/248 submitted by Actions Sands Pty Ltd for stockpiling at Lot 5 & 6 DP 565926 Pacific Highway, Chinderah be approved subject to the following conditions:-

**General**

1. The development shall be completed generally in accordance with the Environmental Impact Statement prepared by Martin Findlater & Associates dated 11 June 1996 and Drawing No 95024-01 REV A prepared by Martin Findlater & Associates dated 10 June 1996, accept where varied by these conditions.

# AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD FRIDAY 24 JANUARY 1997

2. The storage and supply of any material that is not solely a result of the dredging operations associated with development consent 91/281 or as a result of site preparation works as a result of this consent is prohibited. The storage of landscape materials that are the result of mixing with materials that need to be imported to the site is prohibited.
3. The development shall be completed within 20 years of the commencement of works associated with development consent 91/281.
4. Following completion of the operations, the site is to be rehabilitated including the replacement of topsoil to the satisfaction of the Director, Development Services.
5. The bund wall is to be constructed to a height of RL 5.0m AHD and is to be grassed and landscaped prior to any stockpiling occurring on the site. The maximum height of the stockpiled material shall not exceed RL 5.0m AHD.
6. Compliance with all requirements of the Environment Protection Authority.
7. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within the subject property. All associated costs to be borne by the applicant.
8. Prior to the commencement of any work on site, Lots 5 & 6 DP 565926 are to be amalgamated into one (1) lot under the one (1) title. The plan of subdivision is to be registered with the Lands Title Office prior to the commencement of any work on the site.
9. Landscaping is to be carried out in accordance with the submitted landscaping plans maintained to the satisfaction of the Director, Development Services.
10. Compliance with all requirements of Council's Environment and Community Services Division, specifically including the following matters:
  - (i) All of the mitigating measures and safeguards contained within the Environmental Impact Statement are to be implemented in full by the operators of the facility.
  - (ii) All runoff from the proposed operation is to be collected and directed to stockpile irrigation or to the main pond via impermeable drains.
  - (iii) Prior to any material leaving the site the material is to be sampled and tested for Net Acid Generating Potential (NGAP) and electrical conductivity in relation to pH at a rate of one (1) sample per 1000m<sup>3</sup>.
  - (iv) Material is not to leave this site unless sampled in accordance with Condition 10(iii) and demonstrated to be within the following limits.
    - \* NGAP < 0kg H<sub>2</sub> SO<sub>4</sub>/m<sup>3</sup>
    - \* Electrical Conductivity < 3.0mS/cm in 1:5 soil to water suspension.
    - \* pH > 5.5 in 1:5 soil to water suspension.

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- (v) Further testing of the existing "brickies" sand stockpiled on site is to be carried out in accordance with conditions 10(iii) and 10(iv), prior to leaving the site.
  - (vi) All records of sampling are to be retained for inspection and investigation by Council's Environment and Health Services Unit upon request.
  - (vii) The site is to be engineered and maintained to avoid water standing for extended periods of time.
  - (viii) The drains to the pond are to be constructed in a fashion to drains quickly and avoid isolated ponding.
  - (ix) If routine inspection by Councils entomological unit finds any mosquito breeding on site, control with larvicide will be carried out with all costs being borne by the owner.
  - (x) All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.
  - (xi) The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust, fumes or the like.
  - (xii) Upon commencement of work on the proposed main stockpile, an irrigation/sprinkler system is to be installed on top of the stockpile and along the unsealed haulage roads within the site, to the satisfaction of the Director, Environment and Community Services.
  - (xiii) The irrigation system is to be capable to provide sufficient dampening of the entire stockpile and haulage roads during periods of traffic and/or high speed winds. The use of the bucket to dampen the roads is only to be used as an additional method.
  - (xiv) During periods of high speed wind, the stockpiles of other materials are to be covered so as to minimise the movement of dust and other particulates off site.
11. Compliance with all requirements of Development Consent 91/281.

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## 2. PROPOSED BOUNDARY ADJUSTMENT

GS4/96/139 S96/139

**Applicant:** Jim Glazebrook and Associates  
**Owner:** Ross and Elaine Hardy  
**Location:** Lot 6 DP 597520 and Lot 5 DP 256743 Cudgera Creek Road, Cudgera Creek  
**Zoning:** Part 1(a) Rural and Part 1(b2) Agricultural Protection  
**Est Cost:** Not applicable

# AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD FRIDAY 24 JANUARY 1997

## BACKGROUND

A development application has been received by Council for a proposed boundary adjustment between the subject two lots. The subject site is bisected by Cudgera Creek Road and Cudgera Creek. The subject property is generally flat and has been mostly cleared of native vegetation for cattle grazing and sugar cane cultivation. The majority of the site is zoned Part 1(b2) Agricultural Protection except for the southern corners which is zoned Rural 1(a).

The area of the existing lots is 1265m<sup>2</sup> (Lot 5) and 57.93ha (Lot 6). The area of the proposed new lots is 7700m<sup>2</sup> (Lot 1) and 57.19ha (Lot 2). The existing Lot 5 DP 256743 was created under the Public Road Act and therefore has no dwelling entitlement.

Proposed Lot 1 encloses the existing dwelling and is defined by rational boundaries, ie. Cudgera Creek and Cudgera Creek Road, which sever it from the balance area.

**Figure 2**



# AGENDA OF THE DEVELOPMENT ASSESSMENT PANEL HELD FRIDAY 24 JANUARY 1997

## CONSIDERATIONS UNDER SECTION 90 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

The application has been assessed under the heads of consideration contained within Section 90 of the Environmental Planning and Assessment Act, 1979. This assessment is attached to Council's file. The more significant aspects relative to Section 90 are discussed in detail as follows:-

- (a) (i) The subject land is zoned 1(a) Rural and 1(b2) Agricultural Protection pursuant to the provisions of the Tweed Local Environmental Plan 1987 (TLEP). The subdivision is permissible with the consent of Council subject to compliance with the development standards contained within Clauses 25 and 28 of the TLEP, the relevant aspects of which are discussed later in the report. One of the proposed lots is already below 90% of the minimum allotment size and so the Directors Concurrence is required under State Environmental Planning Policy No. 1 (SEPP1) for the boundary alteration.

### **Clause 25(1)**

Council shall not consent to the subdivision of land within zone 1(a) unless the area of each allotment to be created is not less than 40ha.

Proposed Lot 2 is zoned 1(a) Rural and 1(b2) Agricultural Protection and is 57.19ha in area and is therefore permissible and conforming.

### **Clause 28**

Clause 28(3) - A person shall not erect a dwelling on an allotment of land to which this clause applies unless it has an area of not less than 40ha.

Proposed Lot 2 has an area of 57.19ha, therefore comply with the 40ha minimum development standard for the erection of a dwelling.

### **Clause 28(2) - Subdivision of certain land in zone No. 1(b)**

Council shall not consent to the subdivision of land to which this clause applies unless the area of each allotment to be created by the subdivision is not less than 40ha.

The area of the existing lots is 1265m<sup>2</sup> (Lot 5) and 57.93ha (Lot 6). The area of the proposed new lots to be created is 7700 m<sup>2</sup> (Lot 1) and 57.19ha (Lot 2). Proposed Lot 1 does not comply with the minimum 40ha requirement.

The applicant has lodged an objection to the development standard requiring a minimum of 40ha under SEPP1 contending that it is unreasonable and unnecessary for the following reasons:-

1. The proposal would not adversely impact on the agricultural values of the property and essentially confirms the existing management arrangements on the property.



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2. Both the Condong Sugar Co-operative and NSW Agriculture confirm that there is no objection to the proposal on the basis of potential impacts on the agricultural values of the land.
3. The proposed boundary adjustment defines rational boundaries for proposed Lot 1, having regard to the physical and manmade features, including Cudgera Creek, Cudgera Creek Road and existing farm infrastructure.
4. The boundary adjustment would improve the existing subdivision form and pattern by eliminating Lot 5 DP 256743 which is of a small size and irrational, constricted shape.
5. The proposal essentially confirms an existing rural living situation and facilitates ongoing farm management arrangements.

### Comments on SEPP1 Objection

The applicant's SEPP1 objection is considered well founded as although the variation is numerically large the boundary adjustment is consistent with the purpose of the standard in that the agricultural land will not be fragmented and one irregular shaped non-conforming lot will be eliminated. Accordingly the development standard requiring a minimum of 40ha is considered unnecessary and unreasonable and given the above comments it is considered that the applicant's SEPP1 objection is well founded and should be supported.

### (b)&(c) Environment

The subject site has previously been cleared of most of the native vegetation for the purpose of sugar cane and grazing. The proposal will not disturb any of the existing native vegetation.

### (d) Social and Economic Effect

The applicant has commented as follows:-

*"The proposal would enable the present property managers, ie. the owners daughter and son in law, to gain security of tenure and continue to be resident managers of the property".*

### (g) Flooding

The applicant has commented as follows:-

*"The Q100 flood level in the vicinity of the house site is estimated to be less than RL 6.5m AHD. The proposed house site pad is RL 7.4m AHD approximately."*

Council's Subdivision Engineer has commented as follows:-

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*“The flooding report by Martin Findlater and Associates appears satisfactory. The Q100 flood height is @ 6.1m while the nominated house site is at 7.4m. This satisfies the requirements of DCP No. 5 and provides a 1.3m freeboard above the Q100 flood.”*

**(l) Effluent Disposal**

Council’s Environment and Health Unit have commented as follows:-

*“There are no environmental concerns relating to this minor boundary adjustment subdivision”.*

**(n) Public Authorities**

The Department of Agriculture has comment as follows:-

*“NSW Agriculture has no objection to the proposal in view of the support offered by the NSW Sugar Milling Co-operative in their letter of 19 February 1996.*

*Condong Sugar Mill have provided the following comments:-*

*The area is too small and awkwardly shaped to allow mechanisation on the scale necessary for cane cultivation and harvest. It will not increase possible conflict with existing cane farming activities. Its proposed use as an adjunct to an existing dwelling will not increase or complicate traffic density or flows. In the event of future cane growing or other cultivation to the south of Cudgera Creek, the creek itself and associated vegetation forms an adequate buffer. Therefore we have no objection to its rezoning and incorporation into a separate title that includes a dwelling”.*

**CONCLUSION**

The proposal is considered satisfactory and compatible with surrounding development. The 40ha minimum development standard of Clause 28(2) is considered unnecessary and unreasonable in this particular instance and accordingly the SEPP1 objection is considered well founded and should be supported. Having regard to the above considerations under Section 90 of the Environmental Planning and Assessment Act it is recommended that the proposed subdivision be granted conditional consent and that the Directors Concurrence be requested.

**Engineering Services Division Comments**

No objections subject to Rural Road Development Contribution.

**Building Unit Comments**

No objections.

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## RECOMMENDATION

That:-

- A. The State Environmental Planning Policy No. 1 objection in relation to the 40ha minimum development standard in Clause 28(2) be supported and the Directors Concurrence be requested.
- B. Development Application S96/139 for a proposed boundary adjustment for Lot 6 DP 597520 and Lot 5 DP 256743 Cudgera Creek Road, Cudgera Creek be consented to subject to the following conditions and the Concurrence of the Director of the Department of Urban Affairs and Planning:-

## GENERAL

1. The development shall be completed in general accordance with Plan No M30831 prepared by Brown and Pluthero Pty Ltd and dated 26/9/96 except where varied by these conditions.
2. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within the subject property.
3. No soil, sand, gravel, clay or other material shall be disposed of off the site.
4. 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 to the satisfaction of the Director of Engineering Services prior to release of any linen plan of subdivision and/or prior to occupation of the buildings.
5. The subdivision is to be carried out in accordance with Development Control Plan No. 16 - Subdivisions Manual.
6. The linen plan of subdivision will not be endorsed by the General Manager and released for registration until such time as all conditions of Development Consent No. S96/139 have been complied with.
7. 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.
8. Where the construction work is on or adjacent to public roads, parks and drainage reserves and the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742-1991 (Manual for 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.

## CONTRIBUTIONS

9. Payment of the following contributions pursuant to Section 98 of the Act and the relevant Section 94 Plan prior to release of the linen plan of subdivision. These charges will remain fixed for a period of 12 months from the date of this approval and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of the payment.

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- |    |  |          |
|----|--|----------|
| a. | Rural Road Development Contribution: 1 lot @ \$366<br>S94 Plan No. .... Sector 9 | \$366    |
| b. | Open Space (Structured): 1 lot @ \$494.45<br>S94 Plan No. 5 Sector 9             | \$494.45 |
| c. | Community Facilities - South Coast: 1 lot @ \$587<br>S94 Plan No. 15             | \$587    |
| d. | Shirewide Library Facilities: 1 lot @ \$360<br>S94 Plan No. 11                   | \$360    |
| e. | Eviron Cemetery/Crematorium Facilities: 1 lot @ \$85<br>S94 Plan No. 13          | \$85     |
| f. | Emergency Facilities (Surf Lifesaving): 1 lot @ \$80<br>S94 Plan No. 16          | \$80     |

## **FURTHER APPROVALS**

10. Submission of an application for the subdivision of land under Part 12 of the Local Government Act, 1919, including:
  - i. The final plan and seven (7) copies together with any applicable Section 88B Instrument, accompanied by linen fees of \$90/lot, ie. 2 lots @ \$90/lot = \$180.

## **ROADS/STREETS**

11. Provision of adequate vehicular access in accordance with Council's "Access to Property" pamphlet, including the following specific work:
  - i. Bitumen sealing of all accesses from the road carriageway to the property boundary of each proposed lot.
  - ii. Provision of 375mm minimum diameter pipe culvert crossings, including precast headwalls, to each lot to the satisfaction of the Director of Development Services.
12. Prior to submission of the linen plan, a properly dimensioned plan shall be lodged with Council showing the relative position of existing fences, road formation and boundaries. Any encroaching road boundary fence is to be relocated to the correct alignment prior to release of the linen plan. Any road widening deemed necessary following submission of the plan shall be dedicated at no cost to Council.

## **DRAINAGE/FLOODING**

13. All proposed building pads are to be above the Q100 design flood level, including provision for any localised overland flow, such that at least 300mm freeboard is provided to the satisfaction of the Director Development Services.

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14. Erosion and sedimentation control measures shall be implemented to the satisfaction of the Director Development Services during construction phase in accordance with the publication, "NSW Department of Housing - Soil and Water Management for Urban Development" dated January 1993 (2nd edition).

## SERVICES

### Telephone

15. The production of written evidence from Telstra Australia certifying that satisfactory arrangements have been made for the provision of underground telephone supply.

### Electricity

16. The production of written evidence from Northpower certifying that the reticulation of overhead electricity (rural subdivisions) has been completed.

## ENVIRONMENT PROTECTION

17. Suitable covering and protection is to be provided to ensure that no material is removed from the site by wind, causing nuisance to neighbouring properties.
18. All battered areas are to be topsoiled and grassed, or other suitable protection provided as soon as filling is placed adjacent to neighbouring properties.
19. All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.
20. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust, fumes or the like.
21. Developer to take all necessary precautions to minimise impact from dust during filling operations from the site and also from construction vehicles.
22. The burning off of trees and associated vegetation felled by clearing operations is not permitted unless such burning is carried out in a specially constructed pit provided with an air curtain over the top. Separate approval is required prior to any burning.
23. Construction site work including the entering and leaving of vehicles is to be restricted to between 7.00am and 7.00pm Monday to Saturday and no work on Sundays.
24. All reasonable steps shall be take 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.

L10 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.

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B. Long Term Period - the duration.

L10 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.

25. Certification by a qualified Engineer that the works have been performed under his/her supervision in accordance with the approved engineering plans and specifications.

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