

[Agenda Report](#)

**TWEED SHIRE COUNCIL  
MEETING TASK SHEET**

**User Instructions**

If necessary to view the original Report, double-click on the 'Agenda Report' blue hyperlink above.

**Action Item - COUNCIL MEETING Tuesday, 15 December 2009**

Action is required for Item **27** as per the Council Resolution outlined below.

---

**TITLE: [EO-CM] Subdivision of Council Land for Road Purposes - Curtawilla Street, Terranora - Lot 28 in DP 250909**

**Cr D Holdom  
Cr B Longland**

**RESOLVED** that:-

1. Council approves the actions to obtain subdivision of part of Lot 28 in DP250909; and
2. Council approves entering into a Contract for Sale with Halcore (Qld) Pty Ltd for the sale of that part of Lot 28 in DP250909 to be subdivided and dedicated as road at a price to be determined by an independent valuer; and
3. All documentation to be executed under the Common Seal of Council.

The Motion was **Carried**

**FOR VOTE - Voting - Unanimous**

**TITLE: [EO-CM] Subdivision of Council Land for Road Purposes - Curtawilla Street, Terranora - Lot 28 in DP 250909**

**ORIGIN:**

**Design**

**FILE NO: DA09/0257**

**SUMMARY OF REPORT:**

In 1997 Council approved an application to develop Lot 7 in DP 788000, located on Terranora Road, Terranora. The land subject of this report, Lot 2, is a Public Reserve located between Curtawilla Street and Lot 7. Please see the plan in the body of the Report.

To enable the development to proceed it was conceded that a part of the Public Reserve needed to be re-classified to enable it to be excised and dedicated as road, as Lot 7 rises steeply from the south and cannot be accessed from Terranora Road

Part of Lot 28 was re-classified by LEP Amendment 120 in the Tweed LEP 1987, however, the development did not proceed. Another application has now been received from Halcore (Qld) Pty Ltd to develop Lot 7 and the applicant is also seeking to utilise the re-classified area of Lot 28 for access from Curtawilla Street to a proposed 6 Lot community title subdivision. The application has been assessed and approved, and it is considered necessary for Council to resolve to approve the subdivision of Council land and then subsequent sale.

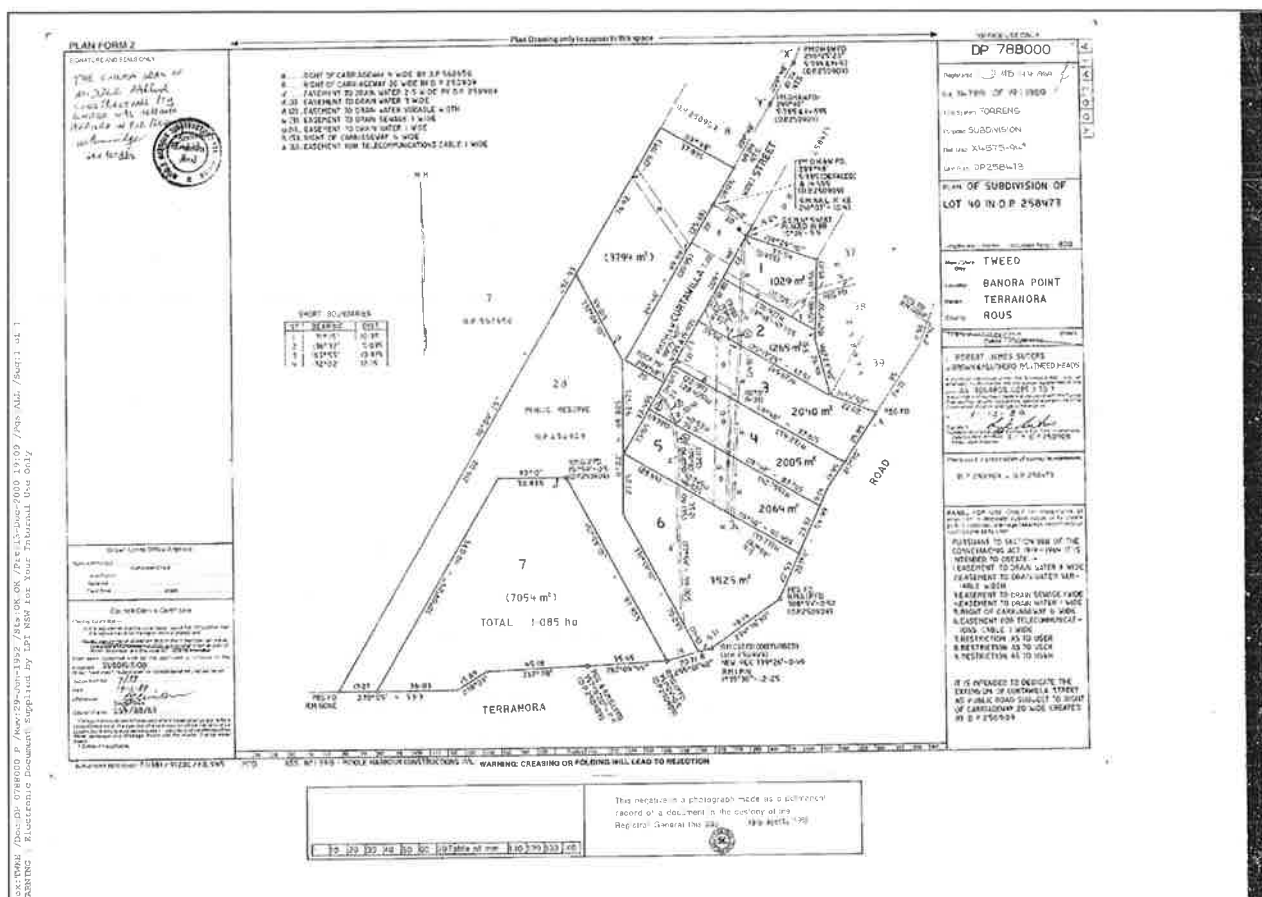
**RECOMMENDATION:**

**That:-**

- 1. Council approves the actions to obtain subdivision of part of Lot 28 in DP 250909; and**
- 2. Council approves entering into a Contract for Sale with Halcore (Qld) Pty Ltd for the sale of that part of Lot 28 in DP 250909 to be subdivided and dedicated as road at a price to be determined by an independent valuer; and**
- 3. All documentation to be executed under the Common Seal of Council.**

## REPORT:

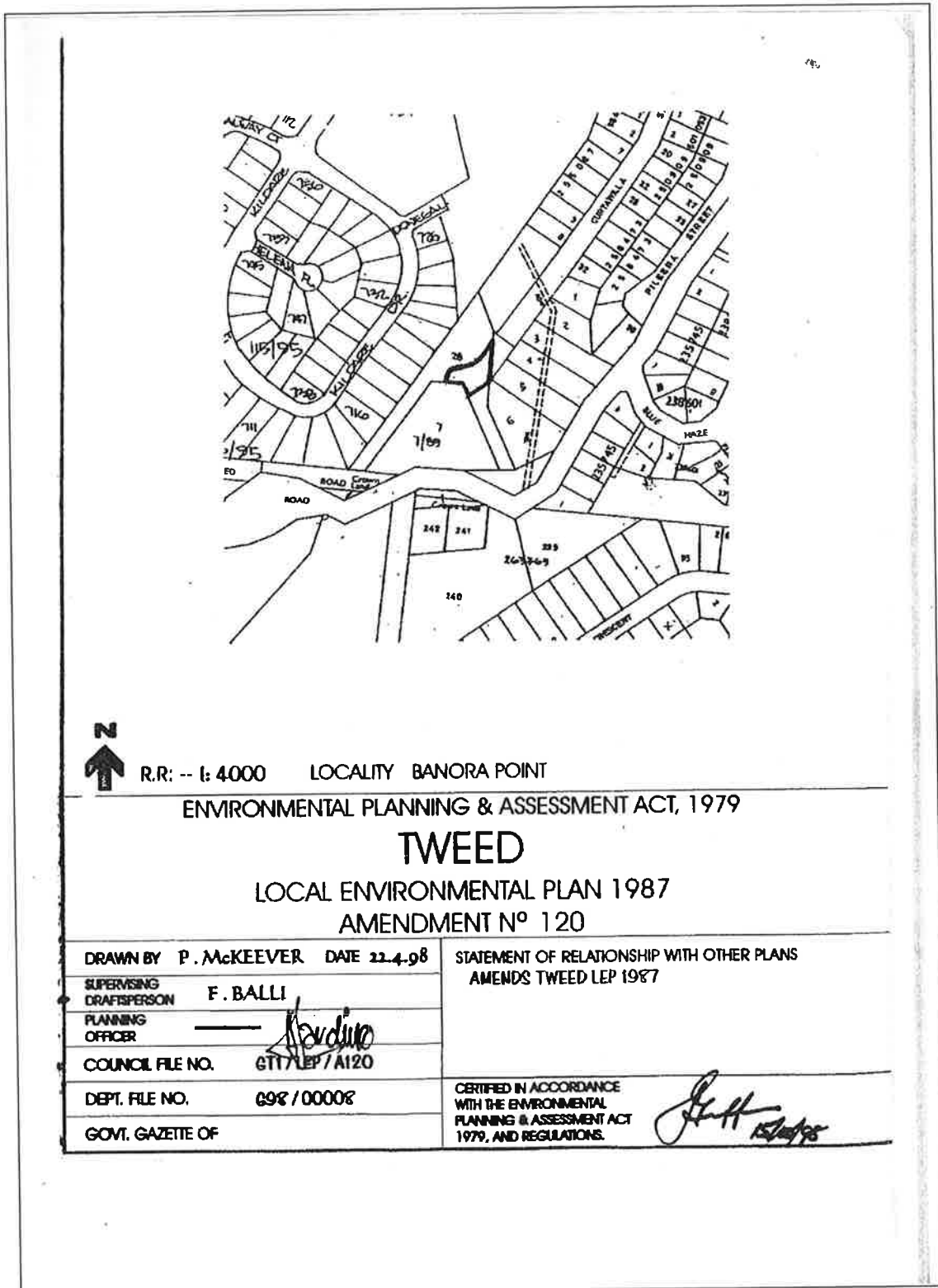
In 1997 an application was lodged and approved by Council to develop Lot 7 in DP 788000, shown below. It is to be noted that the Public Reserve, Lot 28 is located between the end of Curtawilla Street and Lot 7:-



To enable the development to proceed it was conceded that a part of the Public Reserve needed to be re-classified to enable it to be excised and dedicated as road, as Lot 7 falls steeply from Terrahora Road. Copies of reports dated 17 December 1997 and 7 October 1998 are attached to this report to provide a background to the re-classification process and the reasoning of Council's decision to re-classify a part of Lot 28.

On 11 December 1998, the re-classification of part of Lot 28 in DP 250909 from community to operational land was gazetted. The re-classification was effected as LEP amendment No 120 in the Tweed LEP 1987, which discharged the re-classified land from any trusts, estates, interests, dedications, conditions, restrictions or covenants, effectively the area was no longer public reserve. So a part of Lot 28 is now operational land which allows it to be subdivided.

The plan below shows the area, being an extension of Curtawilla Street, affected by the re-classification. It is to be noted that the residue remains public reserve, but that there are no structures in the reserve, it is essentially open space.



R.R: -- 1: 4000 LOCALITY BANORA POINT

ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

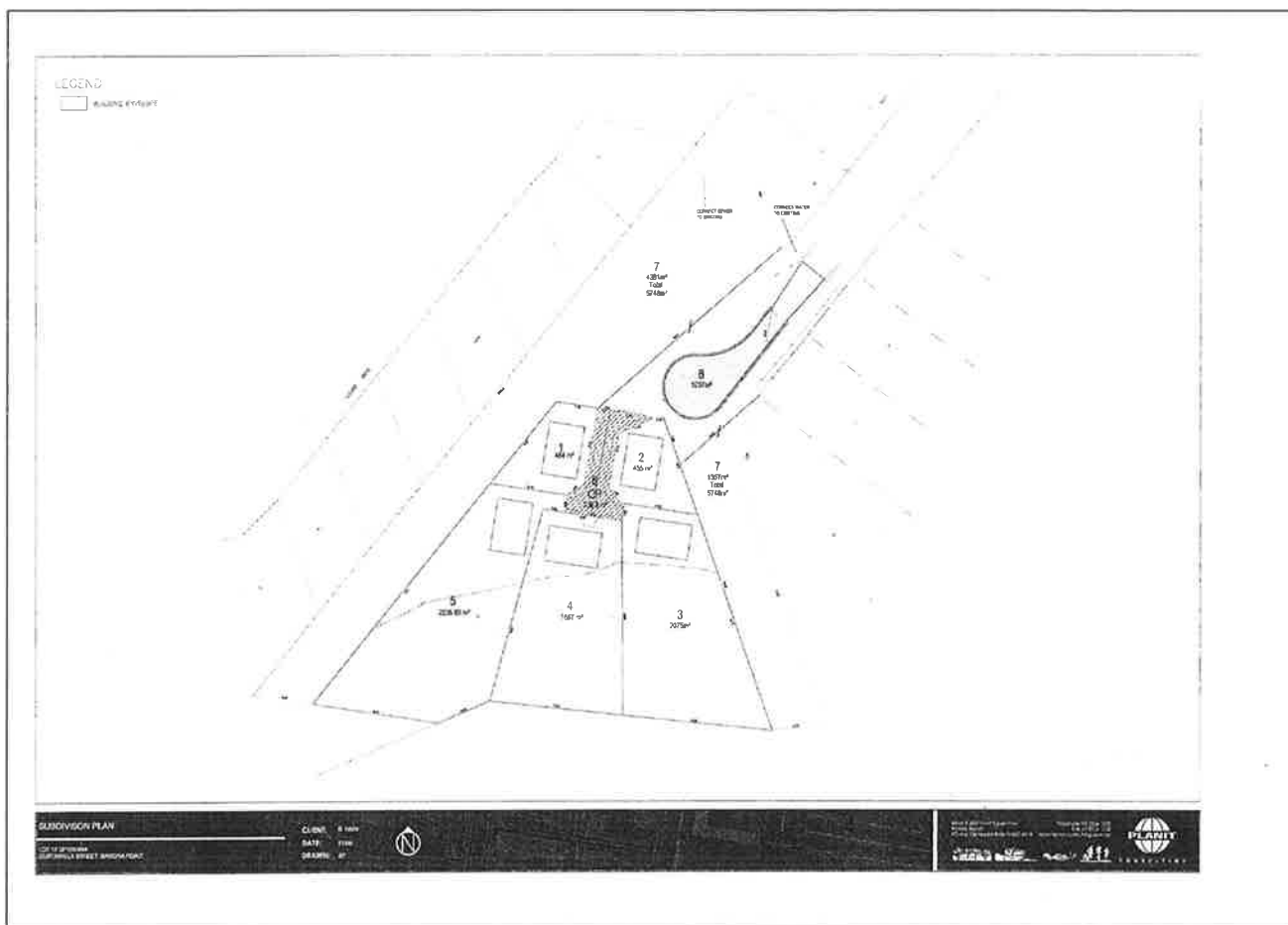
# TWEED

LOCAL ENVIRONMENTAL PLAN 1987  
AMENDMENT N° 120

DRAWN BY P. McKEEVER DATE 22.4.98	STATEMENT OF RELATIONSHIP WITH OTHER PLANS AMENDS TWEED LEP 1987
SUPERVISING DRAFTSPERSON F. BALLI	
PLANNING OFFICER <i>[Signature]</i>	
COUNCIL FILE NO. 611/LEP/A120	CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979, AND REGULATIONS. <i>[Signature]</i>
DEPT. FILE NO. 698/00008	
GOVT. GAZETTE OF	

The 1997 development did not proceed, however, Council has recently assessed an application from Halcore (Qld) Pty Ltd to subdivide the southern part of Lot 7, now known as Lot 12 in DP 1003644. The application has merit and will be approved, but it also requires the extension of Curtawilla Street over the Council land to the new subdivision.

The plan below shows the new development, together with the cul-de-sac to be constructed over Lot 28, the total area required to be dedicated as road will be 1, 237 m<sup>2</sup>:



Photographs of the public reserve are attached, showing where the proposed road will be, as well as showing that there is no infrastructure on the reserve, that it is mainly open space.

To enable the consent to issue, it is necessary for Council to approve the subdivision of Lot 28, as landowner, to create a lot to be dedicated as road.

The consent will issue with the following consent condition:-

*“Prior to the release of the Subdivision Certificate, the applicant shall enter into a Contract for Sale with Council for the part of Lot 28 DP 250909 to be dedicated as road. The purchase price shall be determined by a valuation from an independent valuer, engaged at the applicant’s cost, of the current market value of the land.”*

Therefore to enable the consent to issue, it is necessary to have the approval of Council, as landowner, to allow part of Lot 28 to be subdivided for road purposes for the benefit of the development of Lot 12. This will also ensure that Council will provide the title deed for Lot 28 to the developer to enable registration of his plan of subdivision.

To facilitate the practical aspect of the land transfer, it is also necessary to resolve to enter into a Contract for Sale with the developer, when an independent valuer has determined the market value of the land, which will take into account the value of the benefit to the developer.

Such a resolution will provide certainty to the developer that Council will sell the land to enable the subdivision to proceed. Settlement of the sale to the developer will occur when the plan has registered.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**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](http://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).*

1. Copy of Report to Council dated 17 December 1997 (ECM 9524236).
  2. Copy of Report to Council dated 7 October 1998 (ECM 9524239).
  3. Photographs of Reserve (ECM 9615412).
-

Please Quote  
Council Ref: **GS4/97/70**  
Your Ref No: **Phil Wyper**  
For Enquiries  
Please Contact: **Mrs Nela Turnbull**  
Telephone Direct **(02) 6670 2574**



**TWEED** [oltr]  
**SHIRE COUNCIL**

**L11H18**

Customer Service | 1300 292 872 | (02) 6670 2400

**15 September 2006**

**B & P Surveys  
PO Box 327  
TWEED HEADS NSW 2485**

tsc@tweed.nsw.gov.au  
[www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au)

Fax (02) 6670 2429  
PO Box 816  
Murwillumbah NSW 2484

Please address all communications  
to the General Manager

ABN: 90 178 732 496

Dear Sirs

**Part Lot 28 in DP 250909 - Public Reserve - Curtawilla Street, Banora Point**

Council refers to the above and confirms that part of Lot 28 in DP 250909 has been re-classified as operational land. The re-classification was gazetted on 11 December 1998. A copy of the gazettal notice and plan referred to in the gazettal are attached for your information.

At Council's meeting held 7 October 1998, Council noted that the purpose of the re-classification was to enable a road to be constructed through the public reserve to access a parcel of land for a proposed subdivision. We note that the subdivision related to a parcel now known as Lot 12 in DP 1003644.

Council's files indicate that the subject subdivision did not proceed.

Any approval by Council to the subdivision of Lot 12 incorporating a road dedication through Lot 28 will be assessed on its merits.

Should you wish to discuss this matter further, please do not hesitate to contact our Manager Development Assessment, Garry Smith on 0266 702450.

Yours faithfully

**Ian Munro**  
**Manager**  
**DESIGN**  
Encls.

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979****TWEED LOCAL ENVIRONMENTAL PLAN 1987****(AMENDMENT No. 120)**

I, the Minister for Urban Affairs and Planning, in pursuance of Section 70 of the Environmental Planning and Assessment Act 1979, make the local environmental plan set out hereunder. (G98/00008)

**CRAIG KNOWLES MP**

Minister for Urban Affairs and Planning.

Sydney, 6 December 1998.

**Citation**

1. This plan may be cited as Tweed Local Environmental Plan 1987 (Amendment No. 120).

**Aims, objectives etc.**

2. The object of this plan is to reclassify land, being a public reserve owned by the Tweed Shire Council, from community land to operational land in accordance with Division 1 of Part 2 of Chapter 6 of the Local Government Act 1993.

**Land to which plan applies**

3. This plan applies to land situated in the local government area of Tweed, being part of Lot 28, DP 250909, Curtawilla Street, Banora Point, as shown edged by heavy black on the map marked "Tweed Local Environmental Plan 1987 (Amendment No. 120)" deposited in the offices of the Tweed Shire Council.

**Relationship to other environmental planning instruments**

4. This plan amends Tweed Local Environmental Plan 1987 in the manner set out in clause 5.

**Amendment of Tweed Local Environmental Plan 1987**

5. Tweed Local Environmental Plan 1987 is amended by inserting in Schedule 8 in alphabetical order of locality the following matter:

**Banora Point**

Curtawilla Street Part of Lot 28, DP 250909, as shown edged in heavy black on the map marked "Tweed Local Environmental Plan 1987 (Amendment No. 120)".





R.R: -- 1: 4000 LOCALITY BANORA POINT

ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

**TWEED**

LOCAL ENVIRONMENTAL PLAN 1987

AMENDMENT N° 120

DRAWN BY P. McKEEVER DATE 22.4.98	STATEMENT OF RELATIONSHIP WITH OTHER PLANS AMENDS TWEED LEP 1987
SUPERVISING DRAFTERPERSON F. BALLI	
PLANNING OFFICER <i>[Signature]</i>	
COUNCIL FILE NO. 611/LEP/A120	
DEPT. FILE NO. 698/00008	CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979, AND REGULATIONS. <i>[Signature]</i>
GOVT. GAZETTE OF	

TWEED SHIRE COUNCIL MEETING HELD WEDNESDAY 7 OCTOBER 1998

# Reports from Director Development Services

Figure 2



JIM GLAZEBROOK & ASSOCIATES PTY. LTD.  
 A.C.N. 001 836 799  
 Town Planners & Development Consultants

THIS IS PAGE NO **67**  
 WEDNESDAY 7 OCTOBER 1998

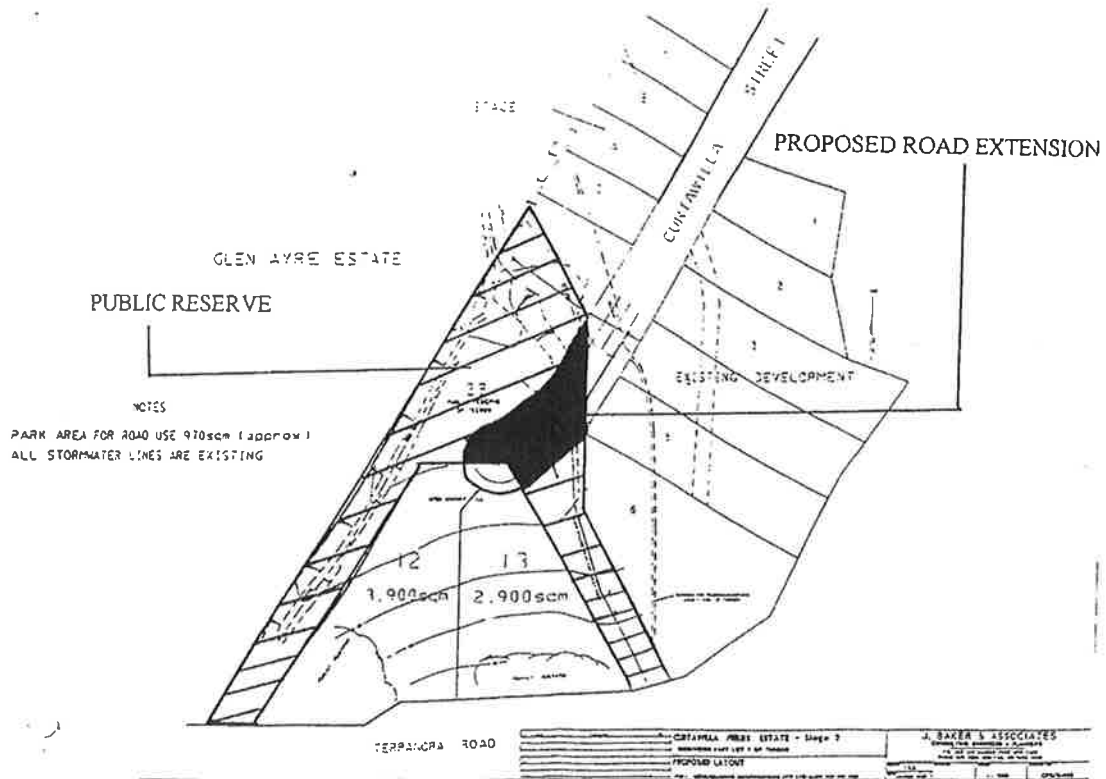
GENERAL MANAGER

OF THE MINUTES OF THE MEETING OF TWEED SHIRE COUNCIL HELD

CHAIRMAN

Reports from Director Development Services

Figure 1



4

JIM GLAZEBROOK & ASSOCIATES PTY. LTD.

A.C.N. 003 836 799

Town Planners & Development Consultants

THIS IS PAGE NO 66  
WEDNESDAY 7 OCTOBER 1998

OF THE MINUTES OF THE MEETING OF TWEED SHIRE COUNCIL HELD

*[Signature]*

GENERAL MANAGER

*[Signature]*

CHAIRMAN

## Reports from Director Development Services

The foregoing issues relate primarily to the merits of the proposed subdivision which would be addressed through the usual development application process. This draft LEP does not pre-empt any considerations in that regard.

The piece of reserve proposed to be reclassified (refer Figure 1) comprises 970m<sup>2</sup> out of a total reserve area of 6,982m<sup>2</sup>. The reserve is not maintained by Council for recreational purposes and one of its primary functions is that of a drainage path. With respect to the properties in Kildare Drive it also provides a measure of visual relief and buffering from residential property to the east. It is considered that none of those functions would be seriously diminished by the proposed reclassification. In fact, the reclassification may facilitate a direct public benefit in that the proponent of the proposed subdivision has offered to embellish the residue of the reserve so that it can be maintained for the enjoyment of local residents.

### THE PUBLIC HEARING

The public hearing was chaired by Martin Findlater of Martin Findlater and Associates Pty Ltd. It was held on Thursday 27 August, 1998, commencing at 6.30pm in the Tweed Heads Civic Centre.

A copy of the report on the public hearing was delivered to Council on Wednesday 9 September 1998 and is tabled herewith. The report makes the following findings and recommendation-

#### "FINDING

1. *The public have been provided with opportunity to comment on the proposed reclassification of Lot 28 DP 250909 from "Community Land" to "Operational Land".*
2. *No public comment relevant to the proposal was received.*
3. *public benefit will be achieved through the embellishment of the remaining reserve as a consequence of the Curtawilla Street extension.*

#### RECOMMENDATION

*This area shaded black in Exhibit C being part of public reserve Lot DP 250909 be reclassified from community land to operational land".*

### CONCLUSION

It is concluded that the public consultation process has not identified any issues which indicate that the reclassification should not proceed as proposed in draft LEP A120.

## Reports from Director Development Services

### REPORT:

#### BACKGROUND

Council at its meeting of 17 December, 1997 considered a report in respect of this matter and resolved that:-

- "(i) In accordance with Section 54 of the Environmental Planning and Assessment Act 1979 Council prepares a draft Local Environmental Plan for reclassification of the public reserve, being part of Lot 28 DP 250909 Curtawilla Street, Banora Point, from "community land" to "operational land".*
- (ii) The Department of Urban Affairs and Planning be advised that in Council's opinion no environmental study is necessary for the draft Local Environmental Plan.*
- (iii) Subject to the issuance of a Section 65 certificate, the draft Local Environmental Plan be placed on public exhibition and a public hearing be conducted in accordance with the requirements of the Environmental Planning and Assessment Act and Local Government Act, 1993."*

Following receipt of a Section 65 Certificate from the DUAP the draft LEP was notified to surrounding landowners, advertised in the Tweed Link newspaper and publicly exhibited for a period of 28 days between 13/7/98 and 10/8/98.

Notice of the public hearing, as required by Section 29 of the Local Government Act 1993 (LGA), was also given in conjunction with the public notification and exhibition process. The hearing was held on Thursday 27/8/98.

#### PURPOSE OF THE REPORT

The purpose of this report is to facilitate Council's consideration of any submissions arising from public notification/exhibition of the draft LEP and the report of the public hearing.

#### NOTIFICATION/EXHIBITION OF DRAFT LEP

No submissions were received during the 28 day exhibition period. However one (1) late submission (dated 3 September 1998) has since been received. The submission is an objection which puts forward the grounds,

- 1. We chose to build at Kildare drive because our block of land adjoins a nature reserve. We believe this area is an ideal place for a family such as ours to live, providing a place where our children can safely play away from the road.*
- 2. This area is a sanctuary for our already depleted native flora and fauna.*
- 3. There would certainly be an increase in the volume of noise and traffic.*
- 4. If housing were to go ahead the natural buffer zone created by local flora would put the residents at danger, should an accident occur off Terranora Road".*

*Reports from Director Development Services***6. ORIGIN: Subdivision Unit****FILE NO: GT1/LEP/A120 & GS4/97/70 424****PROGRAM/FUNCTION: Development Determinations****POLICY: Nil****REPORT TITLE:****Reclassification of Part of Lot 28 DP 250909 Curtawilla Street, Banora Point from 'Community Land' to 'Operational Land'.****SUMMARY OF REPORT:**

Council has previously resolved to prepare an amendment to the Tweed Local Environmental Plan 1987 to reclassify part of Lot 28 DP 250909 Curtawilla Street, Banora Point from 'community' to 'operational' land. This site is a public reserve. The purpose of the reclassification is to enable a road to be constructed through the public reserve to access a parcel of land for a proposed two lot subdivision.

The Local Environmental Plan amendment has been publicly exhibited and a public hearing conducted in accordance with the requirements of the Environmental Planning and Assessment Act, 1979 and Local Government Act 1993.

Jim Glazebrook and Associates have been engaged to carry out the reclassification by way of a Local Environmental Plan amendment and Mr Glazebrook's report and recommendations are reproduced in the body of this report.

**RECOMMENDATION:**

That in accordance with Section 68 of the Environmental Planning and Assessment Act, 1979 the draft Local Environmental Plan be forwarded without amendment to the Director of the Department of Urban Affairs and Planning for a report to the Minister under Section 69 of the Act.

*Reports from Director Development Services*

6. **ORIGIN:** Subdivision Unit

**FILE NO:** GS4/97/70 424

**PROGRAM/FUNCTION:** Development Determinations

**POLICY:** Nil

**REPORT TITLE:**

**Reclassification of Part of Lot 28 DP 250909 Curtawilla Street, Banora Point from "Community Land" to "Operational Land".**

**SUMMARY OF REPORT:**

Middleharbour Constructions Pty Ltd have lodged a development application proposing the creation of a two lot subdivision of Lot 7 DP 788000 Curtawilla Street, Banora Point. Access to the subdivision is proposed via an extension of Curtawilla Street within Lot 28 DP 250909, being a Public Reserve.

The development application has been assessed and is suitable for conditional approval, however prior to formal determination of the application reclassification of that part of the Public Reserve affected by the road extension is required.

Jim Glazebrook and Associates have been engaged (at the developers cost) to carry out the necessary reclassification by way of an Local Environmental Plan amendment and Mr Glazebrook's report and recommendation are reproduced in the body of this report.

**RECOMMENDATION:**

That :-

- (i) In accordance with Section 54 of the Environmental Planning and Assessment Act 1979 Council prepares a draft Local Environmental Plan for reclassification of the public reserve, being part of Lot 28 DP 250909 Curtawilla Street, Banora Point, from "community land" to "operational land".
- (ii) The Department of Urban Affairs and Planning be advised that in Council's opinion no environmental study is necessary for the draft Local Environmental Plan.
- (iii) Subject to the issuance of a Section 65 certificate, the draft Local Environmental Plan be placed on public exhibition and a public hearing be conducted in accordance with the requirements of the Environmental Planning and Assessment Act and Local Government Act, 1993.

*[Signature]*

GENERAL MANAGER

*[Signature]*

CHAIRMAN

## Reports from Director Development Services

### REPORT:

#### BACKGROUND

A development application proposing a two lot residential subdivision of part of Lot 7 DP788000 was received by Council on 1 September, 1997. The proposed lots have frontage to Terranora Road however, because of severe access constraints, it has been proposed that access be obtained via Curtawilla Street. That necessarily involves the extension of Curtawilla Street through Lot 28 DP250909 which is a public reserve vested in Council.

Submission of the application followed a letter from Council (dated 29 May, 1997) to the applicant (John Baker and Associates) which advised as follows:-

*"Following consideration of the proposal by the Development Assessment Panel the General Manager has advised that he is prepared to endorse a development application on behalf of Council as owner of Lot 28 DP250909 (Public Reserve) subject to the following:-*

1. *Rather than providing each proposed lot with "battleaxe" frontage to Curtawilla Street, the access handles should be dedicated as a public road to avoid potential liability issues arising from severing the reserve by private Land;*
2. *The proposal will require reclassification of part of the public reserve from "Community Land" to "Operational Land" by an amendment to TLEP 1987. This amendment should be at the proponents cost and would be processed in conjunction with processing and determination of any subdivision DA. The "reclassification" would need to be gazetted prior to determining the DA. As the LEP Amendment involves Council owned land and having regard to DUAP Circular C18, an independent consultant should be engaged to process the LEP Amendment;*
3. *Compensation for the area to be acquired for road should be paid to Council based on a valuation from the Valuer General's Department at the proponents cost. Rather than paying compensation in cash, Council could accept embellishment of the reserve (or another reserve in the locality) to an equivalent value."*

Pursuant to Section 45 of the Local Government Act 1993 (LGA 1993) "community land" may not be sold by Council and consequently reclassification of the land to "operational" would be required to enable the matter to proceed. Clause 27 of the LGA 1993 provides reclassification may be effected through the making of a Local Environmental Plan (LEP).

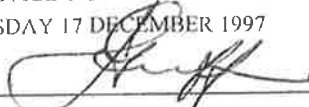
#### PURPOSE OF REPORT

The purpose of this report is to facilitate Council's consideration of the matter and to obtain the necessary resolution under Section 54 of the Environmental Planning Assessment Act, 1979 (EPA Act) should Council wish to proceed with the making of a draft LEP.

#### PROCESS

Should council resolve to prepare a draft LEP then the process to be followed is as follows:-

- The resolution is forwarded to the DUAP together with a request for a Section 65 (EPA Act) certificate.






## Reports from Director Development Services

- Prepare the draft LEP and arrange its exhibition pursuant to Section 66 of the EPA Act.
- Conduct a public hearing and obtain a report thereon as required by Section 29 of the LGA.
- Council considers a report on matters arising from the report of the public hearing and submissions to the exhibited draft LEP and decides whether or not to proceed to make the plan.
- If Council decides to proceed, then the draft LEP and report thereon is forwarded to the DUAP under Section 68 of the EPA Act. Upon gazettal of the LEP the reclassification is effected.

### ISSUES

#### (i) The Proposed Subdivision

The subdivision proposes the creation of two (2) residential lots (refer Figure 2), one containing 3,900 m<sup>2</sup> (Lot 12) and the other 2,900 m<sup>2</sup> (Lot 13). The land to be subdivided is a residue piece of 2(a) zoned land created on a plan of subdivision which was certified by Council in 1989 and registered as DP788000. Because of access constraints to Terranora Road, it is proposed to extend Curtawilla Street through the adjoining public reserve to provide access. Approximately 970 m<sup>2</sup> of the reserve would be taken up by the proposed Curtawilla Street extension.

The subdivision application has been the subject of detailed assessment by the Development Assessment Panel and would be recommended for approval should the necessary reclassification and sale of land be effected.

#### (ii) The Reserve

The reserve contains a total area of 6,982 m<sup>2</sup> and was dedicated to Council on DP 25090 (certified by Council 20 December, 1974). The reserve is not maintained by Council for recreational purposes and appears to function primarily as a drainage path. As part of the proposal the applicant has offered to embellish the residue of the reserve so that it can be maintained for recreational use by local residents.

#### (iii) Public Interest

The draft LEP exhibition and public hearing processes provide the opportunity for public input and for Council to be informed of, and to evaluate, potential public interest issues.

### CONCLUSION

- (i) The nature of the draft LEP and the issues involved are such that it is considered that an environmental study is not necessary.
- (ii) Under the circumstances it is considered appropriate for Council to resolve under Section 54 of the EPA Act to prepare the draft LEP and subject to the issuance of a Section 65 certificate,

# Reports from Director Development Services

place it on public exhibition and conduct a public hearing in accordance with the EPA Act and LGA 1993.

Figure 1



*[Handwritten signature]*

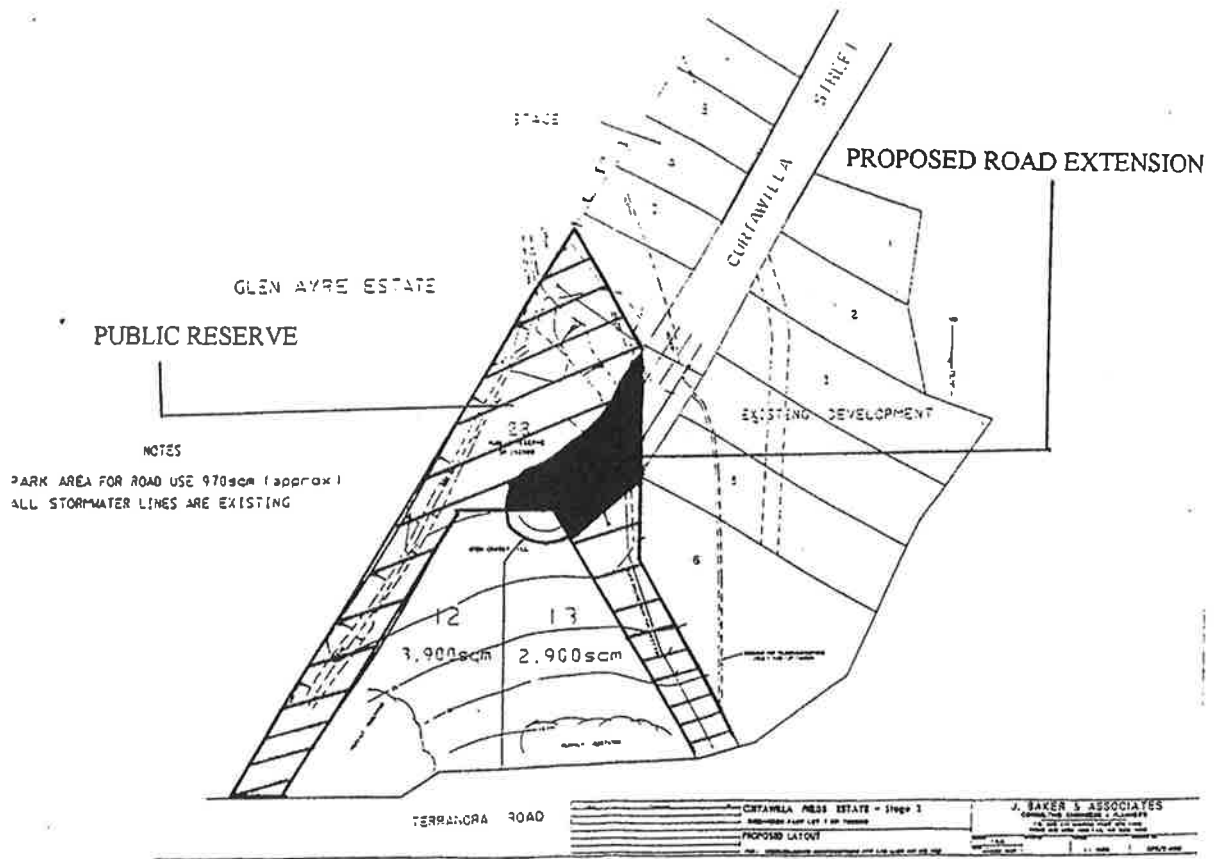
GENERAL MANAGER

*[Handwritten signature]*

CHAIRMAN

# Reports from Director Development Services

Figure 2



*[Signature]*

GENERAL MANAGER

*[Signature]*

CHAIRMAN