

**TITLE: [PD-PC] Development Application DA06/0266 for a Mortuary - Crematorium and LEP Amendment at Lot 703, 704, 705, 707 DP 1000580, No. 9394 Tweed Valley Way, Chinderah**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA06/0266 Pt1**

**SUMMARY OF REPORT:**

An application made under s 72J of the *Environmental Planning and Assessment Act 1979* for a crematorium, ancillary uses, and draft Local Environmental Plan has been received and is the subject of this report.

The application is for a crematorium and associated uses. The application is accompanied with a request for a change to LEP Schedule 3 to facilitate the crematorium, which is otherwise prohibited.

The application is incomplete and does not provide sufficient justification for the making of the draft LEP under the new Section 117 Directions for amending LEPs. The applicant can provide further information to address the new planning directives. Consequently, this report recommends that the applicant be requested to provide the necessary detail prior to the consideration of a s 54 report by Council.

**RECOMMENDATION:**

**That the applicant be advised to submit further information to comply with all relevant planning legislation and controls, specifically in relation to the strategic justification for the draft Local Environmental Plan.**

**REPORT:**

**Applicant:** BCS Group Pty Limited  
**Owner:** BCS Group Pty Limited  
**Location:** Lot 703, 704, 705 & 707 DP 1000580, No. 9394 Tweed Valley Way, Chinderah  
**Zoning:** 1(b2) Agricultural Protection  
**Cost:** \$280,000

**BACKGROUND:**

An application made under s 72J of the *Environmental Planning and Assessment Act 1979* for a crematorium, ancillary uses, and facilitating draft Local Environmental Plan has been received and is the subject of this report.

By way of background information a development application for a crematorium was lodged over the same parcel of land on 14 January 2005. The Development Assessment Unit held the view that the crematorium and chapel were prohibited under the 1(b2) Agricultural Protection zoning of the land. The application (DA05/0036) was reported to and refused by the Development Assessment Panel at its meeting of 31 March 2006.

The legal advice relied upon stated:

*Our opinion is that the proposed development cannot be approved in its present form under the current zoning because:*

- *The use as a chapel, is specifically prohibited under the zoning of the Site; and  
The uses as a mortuary and crematorium in our view are not innominate but would be included within the definition of commercial premises, which are also prohibited under the zoning of the site.*

In response to this position the applicant submitted a 'fresh' application, as referred to above. However, the documentation submitted is incomplete and is reliant on the 'other' application, the provision for which is not contemplated by the *Environmental Planning and Assessment Act, 1979* or accompanying *Regulation 2000*. This matter will be referred back to later in the report.

The proposed draft LEP is for a change that has effect by amending Schedule 3 of the TLEP opposed to a reclassification of the land-use zoning. There are issues associated with the proposition of a rezoning in either form.

By way of background information it is relevant to note two matters that have arisen generally in respect of draft LEPs' for rezoning purposes. Firstly, a draft LEP has been sought over the subject land for a highway service station. The Department of Planning in the advice to Council dated 22 March 2006 stated: -

*"I refer to your letter of 24 November 2005 seeking the Departments reconsideration of its decision not to certify the above plan for public exhibition....."*

*..After reviewing your letter and the draft LEP, the Department remains of the view that the reasons for not issuing a certificate are valid. As indicated in my previous letter, the draft LEP is inconsistent with the Section 117 Direction No.7 – Commercial Development along the Pacific Highway, North Coast and the Direction No.14 – Farmland of State and Regional Significance on the NSW Far North Coast. The RTA continually objected to the draft plan on the basis of its inconsistency with the Section Direction No.7 and it predecessor S28. As well, the RTA objection also related to the safety and efficiency of the Tweed Valley Way and Pacific Highway interchange".*

In the second instance, the Department in its advice of 4 February 2006, in relation to a spot rezoning for a self-storage facility on Kennedy Drive Tweed Head, advised that: -

*"...The Minister has decided not to proceed with the draft plan under section 70 (1) (c) of the Environmental Planning and Assessment Act 1979.*

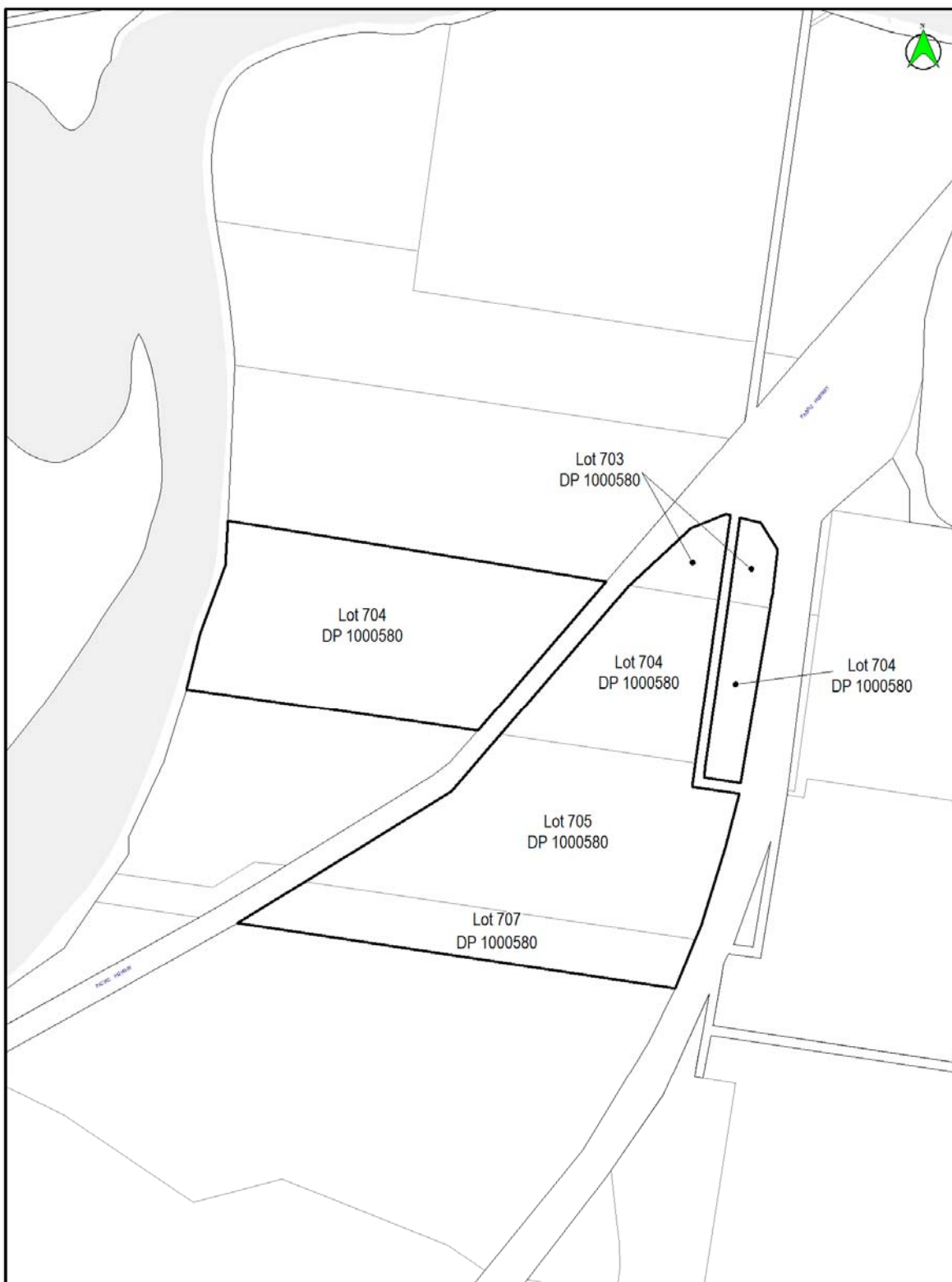
*The Minister refused to make the plan as he considered that there was insufficient planning justification for further complicating the existing residential zone. Council is requested to take a more strategic approach and consider the most appropriate land uses for the area as foreshadowed in the planning reforms..."*

The Department is requiring Council to assume a more strategic approach in managing future and prospective land-uses. Where spot rezoning is proposed it clearly requires strategic consideration and justification.

The application, the subject of this report, is reliant upon information that is fragmented over two applications, one of which, as indicated, has been refused. In its current status this application is deficient in the level of information for a draft Local Environmental Plan. The Department of Planning, as indicated above, requires consideration and justification in a strategic context for draft LEPs'.

The applicant should be given an opportunity to address the requirements of the relevant legislation in preparing their application.

**SITE DIAGRAM:**



<p>© <b>TWEED SHIRE COUNCIL 2006</b>                  Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map.  <b>DO NOT SCALE</b>                  COPY ONLY - NOT CERTIFIED                  P.O. Box 616                  Murwillumbah NSW 2484                  Tel: (02) 6670 2409                  Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i>                  Lot 703, 704, 705 &amp; 707 DP 1000580                  Tweed Valley Way, Chinderah</p>	 <p>TWEED                  THERE'S SHIRRE EVERYWHERE</p>	<p>STRATEGIC                  PLANNING UNIT  <b>Site                  Plan</b>                  Scale: 1:10,000                  Sheet: 1 of 1</p>
<p>File: N:\MapInfo 7...A4P Site Plan.Wor Author: J.Batchelor Date: 3/April/2006</p>			

## **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979, S117 DIRECTIONS**

On 30 September 2005 the Department of Planning issued a series of Section 117 ministerial directions. Direction No.7 -Commercial and Retail Development along the Pacific Highway, North Coast and Direction No.14 - Farmland of State and Regional Significance on the NSW Far North Coast specifically govern the draft LEP.

The subject land is identified as Regionally Significant Farmland on Map 2 of the Northern Rivers Farmland Protection Project (final map 2005) Sheet 2.

The objectives of both Directions are self explanatory, and the need for a strong argument when competing against these objectives is quite clear. The present application is void of any sound reasoning in this respect.

### **Direction No.14 – Farmland of State and Regional Significance on the NSW Far North Coast Objective**

- To ensure that the best agricultural land will be available for current and future generations to grow food and fibre,
- To provide more certainty on the status of the best agricultural land, thereby assisting councils with their local strategic settlement planning,
- To reduce land use conflict arising between agricultural use and non-agricultural use of farmland as caused by urban encroachment into farming areas.

### **Where this direction applies**

This direction applies to Ballina Shire Council, Byron Shire Council, Kyogle Shire Council, Lismore City Council, Richmond Valley Council and Tweed Shire Council.

### **When this direction applies**

This Direction will apply when a council prepares a draft local environmental plan for land mapped as:

- State significant farmland, or
- regionally significant farmland, or
- significant non-contiguous farmland as identified on the set of four maps held in the Department of Planning and marked “Northern Rivers Farmland Protection Project, Final Map 2005 (Section 117(2) Direction)”.

### **What a council must do if this direction applies**

- (1) A draft local environmental plan shall not rezone land identified as “State Significant Farmland” for urban or rural residential purposes.
- (2) A draft local environmental plan shall not rezone land identified as “Regionally Significant Farmland” for urban or rural residential purposes.
- (3) A draft LEP shall not rezone land identified as “significant non-contiguous farmland” for urban or rural residential purposes.
- (4) A draft LEP may be inconsistent with this direction only if council can satisfy the Director-General that:
  - (a) any particular provision or area should be varied or excluded having regard to the provisions of section 5 of the Environmental Planning and Assessment Act, and

- (b) the draft LEP is consistent with Section 4 of the report titled "Northern Rivers Farmland Protection Project - Final Recommendations, February 2005", as lodged in the Department of Planning.

And:-

### **Direction No.7 – Commercial and Retail Development along the Pacific Highway, North Coast Objective**

The objectives for managing commercial and retail development along the Pacific Highway are:

- To protect the Pacific Highway's function, that is to operate as the North Coast's primary inter- and intra-regional road traffic route;
- To prevent inappropriate development fronting the highway
- To protect public expenditure invested in the Pacific Highway,
- To protect and improve highway safety and highway efficiency,
- To provide for the food, vehicle service and rest needs of travellers on the highway, and
- To reinforce the role of retail and commercial development in town centres, where they can best serve the populations of the towns.

#### **Where this direction applies**

This direction applies to those councils on the North Coast that the Pacific Highway traverses, being those councils between Port Stephens Shire Council and Tweed Shire Council, inclusive.

#### **When this direction applies**

This direction applies when a council prepares a draft LEP for land in the vicinity of the existing and/or proposed alignment of the Pacific Highway.

#### **What a council must do if this direction applies**

- (1) A draft LEP that applies to land located on "within town" segments of the Pacific Highway shall provide that:
  - (a) new commercial or retail development shall be concentrated within distinct centres rather than spread along the highway,
  - (b) development with frontage to the Pacific Highway shall consider impact the development has on the safety and efficiency of the highway.
  - (c) For the purposes of this paragraph, "within town" means areas which, prior to the draft local environmental plan, have an urban zone (eg: "village", "residential", "tourist", "commercial", "industrial", etc) and where the Pacific Highway speed limit is less than 80km/hour.
- (2) A draft LEP that applies to land located on "out-of-town" segments of the Pacific Highway shall provide that:
  - (a) new commercial or retail development shall not be established near the Pacific Highway if this proximity would be inconsistent with the objectives of this Direction.

- (b) development with frontage to the Pacific Highway shall consider impact the development has on the safety and efficiency of the highway.
  - (c) For the purposes of this paragraph, “out-of-town” means areas which, prior to the draft local environmental plan, do not have an urban zone (eg: “village”, “residential”, “tourist”, “commercial”, “industrial”, etc) or are in areas where the Pacific Highway speed limit is 80km/hour or greater.
- (3) A draft LEP shall permit the establishment of a highway service centre beside the Pacific Highway, provided that:
- (a) They are located as near as possible to an existing town that has been bypassed,
  - (b) the town’s economy is considered before approval is given to establish any new or expanded highway service centre on the edge or outside the town, and
  - (c) it is spaced no closer than 24 kilometres from another highway service centre or a town through which the highway still passes, and
  - (d) it is limited to one highway service centre to serve both directions of traffic, or one highway service centre per side of the highway,
  - (e) the only uses allowed in highway service centres are:
    - (i) service stations (which may supply convenience goods catering for the needs of the travelling public),
    - (ii) emergency vehicle repairs,
    - (iii) bus/coach terminal facilities (but not depots),
    - (iv) restaurant facilities (preferably both sit-down and fast food),
    - (v) toilet/shower facilities,
    - (vi) tourist information (but not commercial tourist facilities),
    - (vii) telephones,
    - (viii) rest areas (including seating, barbecue and play areas), and
    - (ix) adequate parking for cars, buses and trucks.
  - (f) For the purposes of this paragraph, a highway service centre is a place which provides only services essential to long distance travellers on the highway

## **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

The subject land is zoned 1(b2) Agricultural Protection. The proposed development is commercial, and classified as prohibited. Whilst the application seeks the making of a draft LEP to facilitate the prohibited development the application documentation provides no basis, rational or otherwise, that could assist Council in resolving that a draft Plan should be made.

Although Council's Planning Unit has indicated that the development could in principle be supported, demonstrating an appropriate strategic basis is an essential element that must first be made out.

#### North Coast Regional Environmental Plan 1988

The application does not address the NCREP.

#### State Environmental Planning Policies

The application does not address any relevant SEPPs.

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

There are no draft EPI's that require consideration in the application. It should be noted, as stated above, that the proposed draft LEP for the highway service station has had the required s 65 advertising certificate withheld indefinitely by the Department of Planning.

### **(a) (iii) Development Control Plans (DCP's)**

DCP 2 – Site Access and Parking, DCP 5 – Flood Liable Land, DCP 15 – Advertising Signs Code have not been, where relevant, have not been addressed.

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

The application has not been made in accordance with the Schedule 1 of Regulation 2000.

### **(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**

The application does not provide sufficient detail to properly ascertain its impact on the natural and built environment, socially or economically in the locality. It is anticipated that this can be easily remedied with the submission of appropriate detail.



**(c) Suitability of the site for the development**

The proposed use is classified as prohibited and as such the site cannot be considered as suitable. A remedial measure through a draft LEP is proposed but any support for it remains to be substantiated.

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

The application has not been publicly advertised at this time. The draft LEP must be referred to the Department of Planning's s 54 Panel before it may issue a s 65 Certificate to advertise. It is highly unlikely that the s 54 Panel would support the draft Plan on the information submitted.

**(e) Public interest**

The generality of the application is insufficient for any positive conclusions to be drawn. It follows that the application is not in the public interest.

**OPTIONS:**

1. The applicant is to submit information so as to attain compliance with all relevant planning legislation and controls, noting specifically, that strategic justification for the draft LEP and critical assessment of relevant s 117 Directions is required. That, on submission of the necessary documentation Council will consider the making of the draft Plan.
2. The Department of Planning has clearly indicated that spot rezoning will not be supported where there is no clear strategic basis. As this application is inconsistent with s 117 Directions Nos. 7 and 14 and is neither part of a broader strategic framework or has demonstrated a contextual strategic purpose, the making of a draft Plan is not supported.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

Council has in the past resolved to prepare many of the draft Plans' that have been sought for facilitating prohibited development. Consequently it has established a practice of acceptance without, necessarily, consideration of broader strategic issues and context. The proposed draft Plan is inconsistent with at least two s 117 Directions and there is no real justification for utilising agricultural land for prohibited purposes. This site is not unique and the draft Plan, which will further complicate the existing zoning, should not be considered in isolation but instead as part of broader strategic context. Should Council wish to investigate the appropriateness of the areas existing land-use pattern or wish to establish new areas of urban / support growth the commercial capacity of this site

could then be reviewed. Under these conditions the broader implications on future agricultural land, traffic, land-use function and impacts on neighbouring catchment areas can be considered holistically.

Notwithstanding the above, if the applicant can demonstrate that the draft Plan is appropriate in the circumstances the Planning Unit raises no objection in principle to the proposed land-use or its configuration, provided that all relevant documentation is submitted for consideration.

If Council resolves to prepare a draft Plan on request from an applicant then it should logically follow that the applicant undertake to fulfil, at their expense, the Department's requirements for submission to the LEP Review Panel. The requirements are detailed below for reference.



### Instructions to Users

When notifying the Director-General under section 54(4) of the EP&A Act of a decision to prepare a draft local environmental plan, a council will need to complete the 'Section 54(4) Notification Advice' cover sheet and relevant 'LEP Pro-forma Evaluation Criteria' sheet depending on the category of LEP that is the subject of the section 54(4) notification.

## Section 54(4) Notification Advice Cover Sheet

### LOCAL GOVERNMENT AREA:

### NAME OF DRAFT LEP:

### ADDRESS OF LAND (if applicable):

### MAPS (if applicable):

- Location map showing the land affected by the proposed draft plan in the context of the LGA (tagged 'location map')
- **Existing zoning** map showing the existing zoning of the site and surrounding land and **proposed zoning** change for the site/s (tagged 'comparative existing/proposed zoning')

### PHOTOS and other visual material (if applicable):

- Aerial photos of land affected by the proposed draft plan
- Photos or plans showing relationship of land to which the plan will apply and surrounding land uses

### PURPOSE OF LEP:

- Describe the **current** zoning / controls and **changes** proposed by the draft plan. For complex plans, a table or maps to explain changes should be attached
- Explain **why** it has been resolved to prepare the draft plan, i.e. what is triggering the need for the plan
- Provide compelling reasons, clearly stating the reasons for the proposed changes
- Details of any environmental study to be prepared
- Details of consultation procedures to be adopted in preparation of the plan

### JUSTIFICATION FOR LEP:

This should cover matters such as:

1. Policy and strategic context
  - Consistency with State policy / council strategy
  - Public interest reasons for preparing the draft plan
  - Reference to studies and reports
2. Location context
  - Compatibility with surrounding zoning and land use patterns
3. Implications of not proceeding at that time

### EVALUATION AGAINST CRITERIA:

- Provide evaluation against criteria in the relevant pro-forma as applicable to the LEP category

**LEP Pro-forma Evaluation Criteria**

**Category 1: Spot Rezoning LEP**

1.	Will the LEP be compatible with agreed State and regional strategic direction for development in the area (eg land release, strategic corridors, development within 800m of a transit node)?  <i>Explain:</i>	Y/N
2.	Will the LEP implement studies and strategic work consistent with State and regional policies and Ministerial (s.117) directions?  <i>Explain:</i>	Y/N
3.	Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub-regional strategy?  <i>Explain:</i>	Y/N
4.	Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?  <i>Explain:</i>	Y/N
5.	Will the LEP be compatible/complementary with surrounding land uses?  <i>Explain:</i>	Y/N
6.	Is the LEP likely to create a precedent; or create or change the expectations of the landowner or other landholders?  <i>Explain:</i>	Y/N
7.	Will the LEP deal with a deferred matter in an existing LEP?  <i>Explain:</i>	Y/N
8.	Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these	Y/N

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil

---