

REPORTS THROUGH GENERAL MANAGER

REPORTS FROM DIRECTOR PLANNING & DEVELOPMENT

- 9 **Development Application DA06/0266 for a Mortuary and Crematorium and LEP Amendment at Part Lot 704 DP 1000580, No. 9394 Tweed Valley Way, Chinderah**

ORIGIN:

Development Assessment Unit

FILE NO: DA06/0266 Pt 1; GT1/LEP/2000/83 Pt1

SUMMARY OF REPORT:

An application under s 72J of the *Environmental Planning and Assessment Act 1979* for a crematorium, mortuary and enabling draft Local Environmental Plan has been submitted to Council and is the subject of this report. The development application is accompanied with a request for a change to the Tweed LEP, Schedule 3, to include the land use, which is otherwise prohibited.

The development application and draft LEP have been publicly exhibited and notified to relevant government agencies. Public submissions and representations from the government agencies have been received.

The justification for the draft Plan is largely in the public exhibition documentation. This report, required under s 68 of the Act assesses the public and agency submissions. The assessment is that these submissions do not warrant the cessation of the plan making process nor refusal of the proposed development.

RECOMMENDATION:

That: -

- A. The Director of Planning and Development, in accordance with instrument of authorisation to exercise delegation issued by the Director-General of the Department of Planning dated 16 August 2006, obtain any necessary advice from Parliamentary Counsel in respect of the draft Plan and prepare and furnish a section 69 report in respect of the draft *Tweed Local Environmental Plan 2000 (Amendment No. 83)*, as exhibited, to the Minister administering the *Environmental Planning and Assessment Act 1979* requesting that the Plan be made in accordance with Section 70 of the said Act.**

- B. Upon gazettal of draft Amendment No. 83 to the *Tweed Local Environmental Plan 2000*, Development Application DA06/0266 for a mortuary and crematorium on Part Lot 704 DP 1000580, No. 9394 Tweed Valley Way, Chinderah be approved subject to the following conditions:

GENERAL

1. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
[GEN0115]
2. The development shall be completed in accordance with the all relevant documentation referred to in the correspondence prepared by Jim Glazebrook & Associates and which is held on Council Files DA06/0266 and DA05/0036 and development plans nos. 2411-P2B, 2411-P3A and 2411-P4, prepared by 'The Cad Company' dated 26 February 2006, except where varied by the conditions of this consent.
[GEN0005]
3. All works shall comply with the Council approved Acid Sulfate Soils Management Plan for Minor Works.
4. Soils shall not be transported or removed outside the boundary of the property.
5. The facility shall be constructed and operated in accordance with the Public Health (Disposal of Bodies) Regulation, 2002 and the Guidelines for the Funeral Industry, NSW Health, 2002. The mortuary shall be constructed and operated in accordance with Part 4 of Schedule 2 of the Local Government (General) Regulation 2005.
[GENNS01]
6. The area where 'uncoffined' bodies are transferred from the vehicle reception area to the preparation room shall be screened from public view to the satisfaction of the Director Environment and Community Services.
7. At least one separate hand basin shall be provided that is hands free and provided with adequate hot and cold water.
8. Surfaces in relevant handling and processing areas shall be solid and impervious and easily cleanable.
9. The crematorium activities shall be separated from the existing facility.
[GENNS02]

10. Vehicle corteges/processions to and from the site are prohibited. [GENNS03]
11. Advertising structures/signs to be the subject of a separate development application. [GEN0065]
12. Interment of ashes is not approved in this application.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

13. A Contamination Investigation report, prepared by a suitably qualified person, shall be provided to Council for approval by the Director Environment Community Services, and it is to clearly and unambiguously state whether or not the site is contaminated and the remediation measures required to ensure the site is suitable for the intended use if it is contaminated.
14. Section 94 Contributions

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

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

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

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

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

- (a) Tweed Road Contribution Plan: \$9,531.90
S94 Plan No. 4 (Version 4.0)
Sector 6 - Kingscliff

[PCC0215]

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Water DSP2: 0.95408 ET @ \$4598 \$4,387

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

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

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

[PCC0265/PSC0165]

16. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill and haul route together with documentary evidence that the fill material is free of any contaminants be submitted to Tweed Shire Council for approval by the General Manager or his Delegate.

[PCC0465]

17. The developer shall provide 30 parking spaces including parking for the disabled in accordance with DCP2, AS 2890 and Austroads Part 11. in addition to the parking requirements tabled within development consent 92/0209.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to and approved by Council prior to the issue of a construction certificate.

[PCC0065]

18. The site is to be filled to a minimum level of RL 3.6m AHD. Site filling and associated drainage is to be designed to address drainage on the site as well as existing stormwater flows onto or through the site, and minimizing the impact of filling on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0675]

19. Prior to the issue of a Construction Certificate the following detail in accordance with Councils adopted Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
- (b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
- earthworks
 - stormwater drainage
 - landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, Country Energy and Telstra)

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

20. Permanent stormwater quality treatment shall be provided in accordance with the following:

- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the *Tweed Urban Stormwater Quality Management Plan* and Councils *Development Design Specification D7 - Stormwater Quality*.

- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximizing permeable / landscaped areas, stormwater retention / detention / reuse, and use of grass swales in preference to hard engineered drainage systems.

[PCC1105]

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

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

shall not be approved until prior separate approval to do so has been granted by Council under section 68 of the Local Government Act 1993.

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

[PCC1145]

22. Erosion and Sediment Control shall be provided in accordance with the following:

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

PRIOR TO COMMENCEMENT OF WORK

23. The erection of a building in accordance with a development consent must not be commenced until:

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and

- (b) the person having the benefit of the development consent has:**
 - (i) appointed a principal certifying authority for the building work, and**
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and**
- (c) the principal certifying authority has, no later than 2 days before the building work commences:**
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and**
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and**
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:**
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and**
 - (ii) notified the principal certifying authority of any such appointment, and**
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.**

[PCW0215]

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

[PCW0225]

- 25. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:**

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

26. The building is to be protected from attack by termites by approved methods in accordance with the provisions of Australian Standard AS 3660.1, and:

- (a) Details of the proposed method to be used are to be submitted to and approved by the Principal Certifying Authority prior to start of works; and
- (b) Certification of the works performed by the person carrying out the works is to be submitted to the PCA; and
- (c) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
 - (i) the method of protection; and
 - (ii) the date of installation of the system; and
 - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
 - (iv) the need to maintain and inspect the system on a regular basis.

Note: Underslab chemical treatment will not be permitted as the only method of treatment unless the area can be retreated without major disruption to the building.

[PCW0775]

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

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

Please note that this sign is to remain in position for the duration of the project.

[PCW0985]

DURING CONSTRUCTION

28. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

29. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

30. An automatic fire detection and alarm system, designed to ensure the occupants are given adequate warning so they can evacuate the building in an emergency, must be installed in Class 2 and 3 buildings and Class 4 part of a building in accordance with the provisions of Specification E2.2a of the Building Code of Australia. Smoke alarms must be installed:

(a) within each sole occupancy unit, located on or near the ceiling in any storey -

(i) containing bedrooms -

- * between each part of the sole occupancy unit containing bedrooms and the remainder of the sole occupancy unit; and
- * where bedrooms are served by a hallway, in that hallway; and

(ii) not containing any bedrooms, in egress paths; and

- (b) in a building not protected with a sprinkler system, in public corridors and other internal public spaces, located in accordance with the requirements for smoke detectors in AS 1670 and connected to activate a building occupant warning system in accordance with Specification 2.2a(6) of the Building Code of Australia which states:

A building occupant warning system must comply with Clause 3.22 of AS 1670 to sound through all occupied areas -

A Certificate of Compliance is to be submitted to the PCA prepared by the licensed Electrical Contractor certifying that the installation complies with the above, prior to occupation of the building.

[DUR1245]

31. All materials used in the building must comply with the smoke developed and spread of flame indices specified in Specification C1.10 of the Building Code of Australia.

Note: Many materials including some timbers such as western red cedar do not comply and it is the applicants responsibility to ensure that all materials to be used are within the criteria specified.

[DUR1275]

32. Exits are to be provided so that no point on the floor of the building shall be more than 20 metres from:
- (a) an exit; or
- (b) a point from which travel in different directions to two exits is available in which case the maximum distance to one of those exits shall not exceed 40 metres.

[DUR1285]

33. Exit signs which comply with Part E4.5 of the Building Code of Australia and are designed in accordance with Part E4.8 of the Building Code of Australia and are to be installed. Mounting heights shall be in accordance with AS2293.1.

[DUR1295]

34. Emergency lighting to comply with Part E4.2 of the Building Code of Australia shall be provided. Details of the system to be used and a certificate from the electrical engineer to certify that the system will comply with all relevant requirements of Part E4.4 of the Building Code of Australia and AS 2293.1 are to be submitted to the PCA prior to installation.

[DUR1305]

35. Doors forming exits, paths of travel to exits and parts of exits shall comply with the relevant provisions of D2.19 and D2.20 of the Building Code of Australia.

[DUR1315]

36. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428. [DUR1685]
37. Where a building or part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428. [DUR1695]
38. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- (a) internal drainage, prior to slab preparation;
 - (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
 - (c) external drainage prior to backfilling.
 - (d) completion of work and prior to occupation of the building. [DUR2485]
39. Plumbing
- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
 - (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage. [DUR2495]
40. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard. [DUR2535]
41. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- * 50⁰C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

42. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

43. On completion of the filling work, all topsoil to be respread and the site to be grassed and landscaped.

[DUR0755]

44. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council's General Manager or his Delegate.

[DUR0985]

45. All work associated with this approval is to be carried out so as to minimise any impacts on the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -

- Noise, water or air pollution
- Minimise impact from dust during filling operations and also from construction vehicles
- No material is removed from the site by wind
- Construction, operation and where relevant, the decommissioning of the development

[DUR1005]

46. All shelving, benches, fittings and furniture on which appliances and utensils are positioned within the premises must be of durable, smooth, impervious material capable of being easily cleaned.

[DUR1605]

47. The walls and floors of the premises must be lined, sealed or sheeted with an approved smooth impervious material capable of being easily cleaned.

[DUR1615]

48. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.

[DUR2185]

49. Hazardous or industrial waste must be stored and disposed of in a manner to minimise its impact on the environment including appropriate segregation for storage and separate disposal by a waste transporter approved by the Director Environment and Community Services.

[DUR2215]

50. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

51. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads.

[DUR2415]

52. The On-site Sewage Management System shall be installed in accordance with an Approval to Install an On-site Sewage Management System under Section 68 of the Local Government Act 1993.

[DUR2775]

53. A certificate is to be submitted by a Registered Surveyor certifying that all floor areas are constructed above 3.7 metres AHD. Certification of those levels by a registered surveyor must be submitted to the Principal Certifying Authority prior to proceeding past floor level to ensure that the floor is above flood level.

[DUR1365]

54. Provision to be made for a flood free storage area for stock and equipment susceptible to water damage.

[DUR1395]

55. The contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

56. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act.

[DUR2625]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

57. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

58. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

59. Portable fire extinguishers containing an extinguishing agent suitable for the risk being protected must be installed in accordance with Australian Standard AS 2444 "Portable Fire Extinguishers - Selection and Location" and Part E1.6 of the Building Code of Australia.

[POC0515]

60. All existing essential fire safety measures are to be certified by a qualified person to the effect that each of the fire safety measures has been assessed and were found to be performing to a standard not less than that to which it was originally designed.

[POC0525]

61. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

62. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.

[POC0615]

63. All wastes, chemicals and fertiliser shall be collected, stored and disposed to the satisfaction of the Director Environment Community Services. Materials shall not be permitted to flow or percolate to any watercourse.
69. Hours of operation shall be limited to:
- * Mortuary - 24 hours per day, 7 days per week
 - * Crematorium - 7 days per week, 9.00am-9.00pm
 - * Private ceremony as for crematorium.
 - * No operations are to be carried out on Sundays or Public Holidays
 - * All deliveries and pickups relating to the business are to occur within the approved hours
64. Mortuary waste water only shall be directed to the proposed separate on-site sewerage management facility. All toilet wastes shall be directed to the existing system.
65. All clinical wastes shall be collected, stored and disposed via the Council approved clinical waste collection service.
66. The crematory shall be kept clean, tidy and in good working order at all times.
67. Gaseous discharges from any stack or cremation process shall not be permitted to impact the amenity, including by way of visible emissions, of the area and shall comply with Schedule 6 of the Protection of the Environment operations (Clean Air) Regulation 2002
- [USENS01]
68. No residential or caretakers residence is approved by this consent.
69. No places of assembly or area of public ceremony or the like is approved by this consent, except for private ceremony within the 'Melaleuca Room'
- [USENS02]
- USE**
70. 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.
- [USE0125]
71. All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997.
- [USE0135]

72. Except as may be expressly provided in the approval, the approval holder must comply with section 120 of the Protection of the Environment Operations Act 1997 prohibiting the pollution of waters.

[USE0155]

73. All external artificial lighting shall be shielded where required to the satisfaction of Councils General Manager or his delegate to ensure that the spill of light or glare from such lighting does not create a nuisance to any adjoining or neighbouring premises.

[USE0205]

74. All plant and equipment installed or used in or on the premises: -

(a) Must be maintained in a proper and efficient condition, and

(b) Must be operated in a proper and efficient manner.

In this condition, "plant and equipment" includes drainage systems, infrastructure, pollution control equipment and fuel burning equipment.

[USE0315]

75. The premises shall be maintained in a clean and tidy manner.

[USE0965]

76. A sharps container shall be provided for the storage of used disposable needles in any skin penetration process. The sharps container shall be collected by an authorised medical waste collection service to the satisfaction of Council's General Manager or his delegate.

[USE1025]

GENERAL TERMS OF APPROVAL UNDER PART 5 OF THE WATER ACT 1912

General Conditions

The purposes of these conditions are to -

- define certain terms used in other conditions
- specify the need to obtain a license, permit or authority before commencing any works
- specify that, in most cases an approval will only be issued to the occupier of the lands where the works are to be located (as required by the Water Act)
- require existing approvals to be cancelled or let lapse when a license is issued (if applicable)
- require the safe construction and operation of all works
- require the use of appropriate soil conservation measures
- limit vegetation destruction or removal to the minimum necessary

- require the separate authorisation of clearing under the NVC Act
- allow conditions to be imposed for management of fuel (petroleum)
- require the payment of fees on the issuing of an approval

In the following conditions relating to an approval under the Water Act 1912:

"the Department" means the Department administering the Water Act 1912;

"approval" means a license, permit, authority or approval under that Act;

"river" has the same meaning as in Section 5 of the Water Act 1912;

"work" means any structure, earthwork, plant or equipment authorised under the approval to be granted, as defined in Section 5 and 105 of the Water Act 1912;

"controlled work" means any earthwork, embankment or levee as defined in Section 165 of the Water Act 1912.

- Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, an approval under Part 5 of the Water Act 1912 must be obtained from the Department. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.
- An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act 1912.
- When the Department grants an approval, it may require any existing approvals held by the applicant relating to the land subject to this consent to be surrendered or to let lapse.
- All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.
- All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.
- The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.
- All vegetation clearing must be authorised under the Native Vegetation Conservation Act 1997, if applicable.

- The approval to be granted may specify any precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.
- A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.
- Any license so issued, from the date of issue, will be subject to Annual Cost Recovery Water Management Charges as set by the Independent Pricing and Regulatory Tribunal.

Conditions relating to water entitlements

The purposes of these conditions are to -

- allow rules for water transfers to be applied
- specify an annual entitlement (regulated and unregulated streams)
- allow the placement of limitations as to when water may be taken to ensure a flow remains for other users and the environment (unregulated streams)
- A transfer of an entitlement shall be subject to the provisions of the Water Act 1912 the regulations made thereunder and the transfer rules applying at the time of application as determined by the Department
- The authorised annual entitlement will not exceed 1 megalitre.
- Extraction of water under the approval to be issued shall be subject to conditions with regard to availability of supply and such restrictions as are deemed necessary by the Department from time to time to ensure an adequate flow remains for other water users and the environment.

Conditions for water use

The purposes of these conditions are to -

- allow the department obtain an accurate measure of water use where necessary
- specify the purpose(s) for which the water may be used
- specify conditions to protect water quality and the environment
- ensure proper management of tailwater drainage
- ensure accessions to groundwater systems are restricted.
- If and when required by the Department, suitable devices must be installed to accurately measure the quantity of water extracted or diverted by the works.
- All water measuring equipment must be adequately maintained. It must be tested as and when required by the Department to ensure its accuracy.
- The use of water shall be conditional on no tailwater drainage being discharged into or onto -
 - any adjoining public or crown road
 - any crown land

any river, creek or watercourse
any groundwater aquifer
any area of native vegetation
any wetlands

Conditions for Bores and Wells

See also "general conditions" and "conditions for water use"

The purpose of these conditions are to -

- set a limited time for bore construction
- allow DIPNR access for inspection and testing
- specify procedures if saline or polluted water found
- specify procedures if the bore is abandoned
- require advice if water found
- specify the volumetric allocation for each purpose of the entitlement
- identify lands that may be irrigated
- specify the volumetric allocation for the works purpose
- allow DIPNR to alter the volumetric allocation at any time
- Works for construction of bores must be completed within such period as specified by the Department.
- Within 2 months after the works are completed the Department must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are notified in the approval.
- Officers of the Department or other authorised persons must be allowed full and free access to the works for the purpose of inspection and testing.
- Water shall not be pumped from the works for any purpose other than dewatering for construction purposes.
- The use of water shall be conditional on no tailwater drainage being discharged into or onto -
 - any adjoining public or crown road
 - any crown land
 - any river, creek or watercourse
 - any groundwater aquifer
 - any area of native vegetation
 - any wetlands
- The work shall be managed in accordance with the constraints set out in the "Tweed Shire Council Minor Works Acid Sulfate Soil Management Plan" as detailed in Appendix F of the Statement of Environmental Effects produced by Darryl Anderson Consulting Pty Ltd dated January 2005.
- Dewatering shall be undertaken for a maximum period of 2 days only (Should a longer duration be required, a groundwater management plan shall be developed for water disposal)

- The licensee shall inform a DIPNR Hydrogeologist (at the Grafton office on 02 6640 2000) a minimum of 5 days prior to the commencement of dewatering.
 - The volume of groundwater extracted as authorised must not exceed 1 megalitres.
 - The Department has the right to vary the volumetric allocation or the rate at which the allocation is taken in order to prevent the overuse of an aquifer.
 - The licence shall lapse within three (3) months of the date of issue of the licence.
- C. The owners of the land be advised that the peak flood level for this locality is RL8m AHD and they should consider the potential flood impacts in relation to the proposed new facilities.

REPORT:

Applicant: BCS Group Pty Ltd
Owner: BCS Group Pty Ltd
Location: Part Lot 704 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 enabling draft Local Environmental Plan has been received and is the subject of this report.

This matter has been reported to Council on two prior occasions, the reports are attached for reference. The resolution of the latter report was to inform the Director-General of the Department of Planning of Council's intention to prepare the draft LEP. The Director General issued an authorisation to exercise delegation in respect of the public exhibition on 16 August 2006. Advertising of the draft LEP and development application was undertaken between 15 November and 15 December 2006. All of the advertising material is available on Council's file for inspection.

In response to the public exhibition of the application sixteen submissions were received and are attached to this report for reference.

NSW Department of Planning

Further to Council's resolution of 2 May 2006 and the communication of such to the Department of Planning the Director-General advised on 16 August 2006 of the dispensation of the requirement to prepare a Local Environmental Study and therefore sections 57 and 61 of the Act also.

The delegation issued by the Director-General under s 23 of the act enables Tweed Council to prepare and furnish a s 69 report on the Minister for the making of the Plan, provided the report complies with all of the provisions of s 69 and is in the prescribed format.

Section 62 Consultation Process

Prior to the certification or exhibition of the Draft Tweed Local Environmental Plan (Amendment No.83) Council, pursuant to Section 65 of the Act, consulted with all relevant external authorities, which comprised:-

- NSW Department of Primary Industries (DPI).
- NSW Roads Traffic Authority (RTA).
- NSW Department of Environment and Conservation (DEC).

Each of the departments raised matters for consideration but did not object to the making of the Plan or the development per se. The issues raised were taken into consideration and reported on in the explanatory notes to the public exhibition material. Whilst the exhibition documentation is held on Council's file the main issues may be summarised as:

- (a) the RTA raised issue with the long slow moving funeral corteges in the 110km/h zone of the adjacent Highway. As referred to in the exhibition documentation, the draft Plan amendment specifically prohibits funeral corteges to and from the property.
- (b) the RTA also raised potential noise impacts, but this appears not to have properly considered the significant setback of the buildings to the adjoining roads, the extent of vegetation buffering and for this class of building the requirement for acoustic treatment under the Building Code of Australia.
- (c) DEC raised concern of potential land-use conflicts associated with air, noise and odour. Council's Environment and Health Services Unit has assessed the proposal against the Protection of the Environment Operations Act 1997 (POEO Act) and raises no issues in this regard. The separation measures to reduce land use conflict are discussed in the report.
- (d) 117 Direction No. 14 (Farmland) identifies the land subject to the draft Plan as regionally significant farmland. The direction does not allow rezoning of land identified as "Regionally Significant Farmland" for the urban or rural residential purposes. The purpose of the amendment is to enable the land use of a crematorium and mortuary, which is prohibited development under the provisions of the Tweed LEP 2000 1(b) Agricultural Protection zone.

DPI advice suggests that the draft Plan is inconsistent with this Direction. The DPI have indicated a concern with regard to section 4 of the Direction, which requires that any inconsistent draft Plan have regard to section 5 of the EP&A Act and be consistent with Section 4 of the report titled "Northern Rivers Farmland Protection Project – Final Recommendations, February 2005". The following is provided in relation to these documents:

Section 5 – EP&A Act

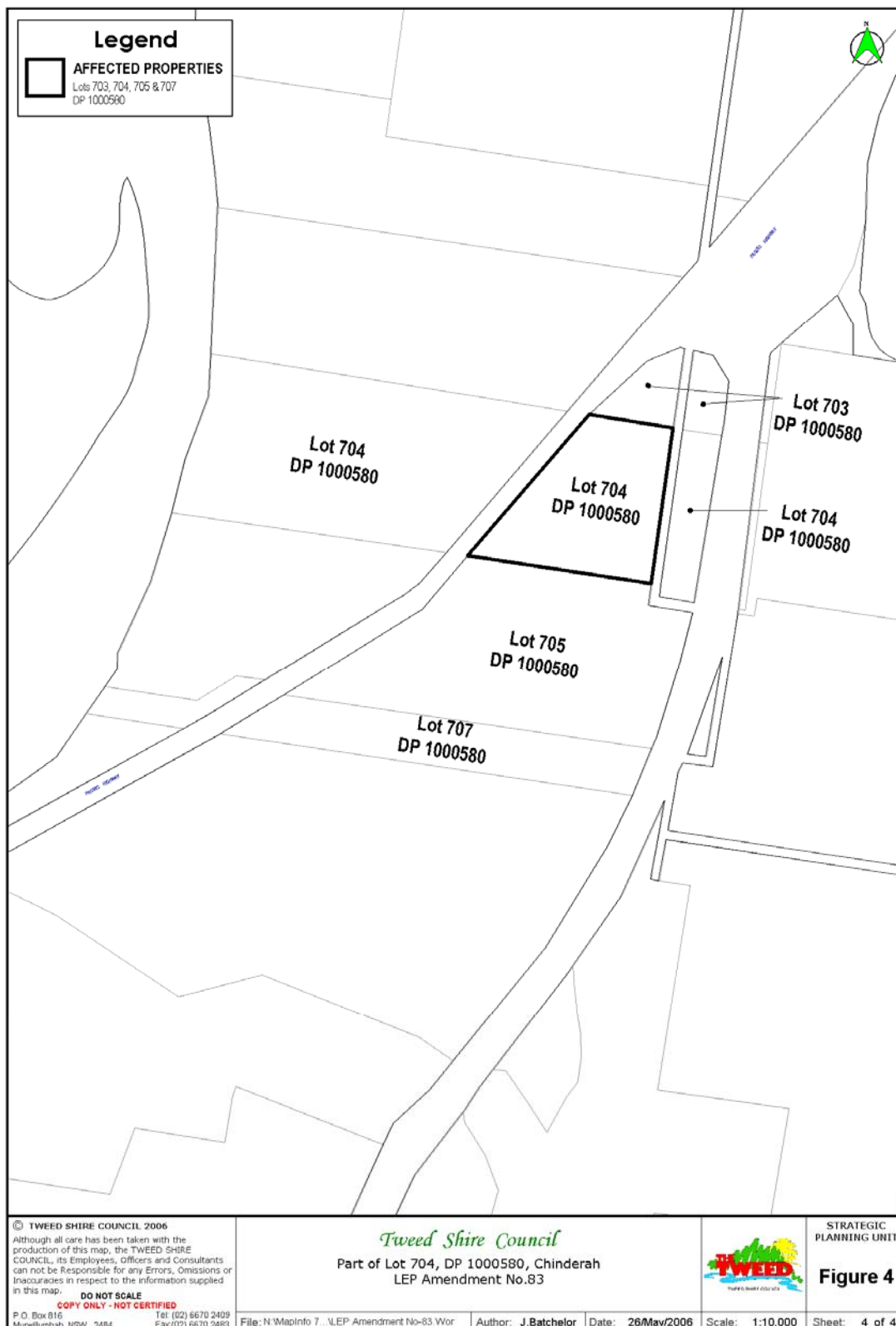
The draft Plan has regard to the "Objects" of the Act.

It is considered that the draft Plan is not inconsistent with s 5 of the Act in so far that all relevant matters of consideration have been taken into account and the development as proposed constitutes orderly and economic utilisation of the land in the context of the current pattern of land-use development.

Section 4 – Northern Rivers Farmland Protection Project – Final Recommendations, February 2005. The following is noted in respect of the draft Plan: -

- (i) Historically that part of the land subject to the draft LEP has not been utilised for "legitimate" rural uses, being agriculture, horticulture, conservation, extractive industry, forestry and the like. The site has supported an approved rural tourist facility, known as Melaleuca Station, since 27 October 1992. Since then, the land has been identified as regionally significant farmland on the Farmland Protection Maps prepared by the Agricultural Office of the NSW Department of Primary Industries, which appear to have been prepared at a broad scale rather than that based on actual site data (constraints). Consequently, the mapping is not reflective of the existing site development. If the crematorium and mortuary development was in isolation it may not have satisfied the relevant objectives however, as the proposed development is within the curtilage of an existing established tourist facility and it will not further impact on the use and operation of any adjoining agricultural land, the objectives are essentially satisfied.
- (ii) As raised above, the conservation of the land in question strictly for the purpose of agricultural use is not available due to the current land-use activities. As mentioned, the existing development was not identified in the protection mapping of the site and consequently the questions raised in respect of the conservation of the sites agricultural capability may not be warranted in this case. The mapping of adjoining land as regionally significant farmland, based on its current use and level of improvement, is likely to be an accurate reflection of the lands status, however, it should be noted that the adjoining lands are quite distinct from the subject site in this regard. The draft LEP does not undermine the objectives of the farmland protection regime, which is principally aimed at the conservation and protection of the best available agricultural land, and as the land-value has likely experienced a marked appreciation since the erection of the rural tourist facility it is unlikely that the subject site would ever revert back to strictly agricultural uses.
- (iii) The land subject of the draft LEP is fragmented by virtue of the existing approved development. The question at issue is whether approval of the crematorium will further fragment and ultimately compromise the agricultural viability of the land. Containing the crematorium and mortuary within the curtilage of the existing development will allow for adequate buffering to adjoining sites consequently mitigating any additional land fragmentation and avoiding any fettering of adjoining agricultural or road activities.
- (iv) The present lot sizes have been determined by past subdivision approvals. Although the subject land is part of a broader 'farming area' the land is highly fragmented both under land title and existing site development. The proposed crematorium and mortuary, which is to be contained within the curtilage of an existing tourist facility, will not cause further fragmentation of the land by altering lot sizes.

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

(a) (i) The provisions of any environmental planning instrument

As discussed in the earlier reports, which are attached, the present agricultural land-use zoning does not permit the proposed development, hence the requirement for the draft Plan. The draft Plan is consistent in content, procedure and purpose with all relevant EPI's.

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

The draft Plan is not inconsistent in content, procedure and purpose with any draft EPI.

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

The proposed development is not inconsistent with any development control plan.

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

The exhibition and assessment of the application have been carried out in accordance with the Act and Regulations.

(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 draft LEP will have an indirect impact due to its change to Schedule 3, that is, to permit what would otherwise be a prohibited land-use. There are no significant environmental or economic impacts in the locality from the LEP amendment. However, it may be concluded from the public submissions that there may be a degree of social (psychological) impact on some members of the community, particularly as it relates to the nature of the proposed development and the perceived distaste of the proposed development in conjunction with a tourist facility. It should also be stated that a crematorium and mortuary would have a similar impact in other locations and could have a higher degree of concern if it was proposed closer to established urban areas.

(c) Suitability of the site for the development

The public exhibition material prepared in relation to the draft Plan and proposed development considered, among other things, the suitability of site for the proposed use. A copy of the exhibition material document is attached to Council's file.

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

Advertising of the draft LEP and development application was undertaken between 15 November and 15 December 2006. Sixteen submissions were received.

Copies of the public submissions were sent, as a matter of courtesy, to the applicant on 18 and 21 December 2006 (names and addresses undisclosed). A formal request for full copies of the submissions (including the earlier omitted information) was later received and provided.

A copy of the submissions is attached for reference.

The main areas of issue may be summarised as:

1. The visibility of the development both in physical building sense and from the venting of exhaust gases, as seen from adjacent roads and elevated properties, and the psychological impacts thereto.
2. The inappropriateness of permitting competing land-uses within such a confined environment.
3. Occurrence of inappropriate signage.
4. Adverse impact on property values.
5. Inappropriate location for a crematorium.

In response, it is impossible to gauge to the psychological and social impact of permitting a crematorium in this locality, and it is acknowledged that there will be some impact, particularly in the short-term, on a small sector of the community. However, for the greater majority, particularly over-time, the presence of the crematorium will likely go unnoticed providing that signage is limited and conditions of consent are proposed that prohibit boundary signage for the crematorium and prohibit the ventilation of visible exhaust gases. In addition, Council may wish to consider placing a time limit on the use of the land for a crematorium.

In relation to the operation of the two land-uses the onus is clearly on the operator to ensure that an appropriate management regime is implemented. If it is not, it is highly likely that the demand for their services would decrease to a point where neither use would be sustainable, consequently self regulation is seen to be an appropriate measure of regulation in this instance.

The location of the crematorium is not considered to be inappropriate. As for property values there has not been any evidentiary material put forward in support of this issue and a significant impact on property values is not anticipated.

The Solicitor for the applicant has provided the following comments in relation to the submissions: -

"We enclose our clients further responses to the issues raised in the public submissions. They should be read in conjunction with the letter dated 12 January 2007 previously sent to you by Jim Glazebrook and Associates Pty Ltd.

Complaint	Response
<i>Use of the whole tourist complex and surrounding agricultural land for the mortuary and crematorium</i>	<i>The application clearly states that it will only use a very small portion of the existing land, and part of the building for the mortuary and crematorium. This use will not impact upon the area currently used for the tourist complex and the balance of the farm.</i>
<i>Present tourist patronage indicates this facility is not viable in its present form</i>	<i>The tourist facility has been operation as an ongoing viable business for 15 years. This demonstrates a failure to properly review the application, which dealt with this issue.</i>
<i>That the mortuary and crematorium will be out of context with a tourist facility and proposed development for a highway service centre</i>	<i>The application clearly states that the establishment of the mortuary and crematorium will be run harmoniously and integrated into the current tourist facility operation. The timing of the use of each part of the complex would be carefully controlled</i>
<i>Farming land will be lost for the development of the mortuary and crematorium</i>	<i>The application clearly states that no existing farming land will be lost by the approval of the mortuary and crematorium. It would appear that the person making the submission failed to read the application and supporting documents</i>
<i>The approval of the application would ruin the view of people owning property in Terranora and Banora Point</i>	<i>The addition to the existing building will be almost invisible from Terranora and Banora Point, which are between three and five kilometres to the North West</i>

<i>The smell and exhaust from the cremator will have an adverse impact upon surrounding properties</i>	<i>The application contains detailed information on the cremator, which shows that it meets the most stringent environmental design and operating criteria. Because of the nature of its design, it has a clean exhaust, free of smoke and odour</i>
<i>The development would have a negative impact on many residents</i>	<i>A review of the complaints reveals that no person directly adjacent to the proposed development or within a 3km radius has lodged an objection</i>
<i>The area is flood prone</i>	<i>The application proposes that the development will be constructed above the one in 100 year flood level</i>
<i>The approval of the application would devalue properties in Tumbulgum</i>	<i>Tumbulgum is over 5km from the proposed development, and a complaint such as this is simply unsustainable</i>
<i>The site is not suitable for the use</i>	<i>It is not possible to reconcile this complaint with the application or the correspondence sent by Council to the applicant prior to the applicant purchasing the property"</i>

These comments are generally concurred with.

(e) Public interest

It is accepted that there will be varying degrees of impact on a small sector of the community however the broader community is not likely to be significantly impacted as a result of the proposal. The impact on the public interest therefore is not seen to be of a magnitude that warrants the refusal of the proposal.

OPTIONS:

1. Resolve in accordance with the recommendation to this report.
2. Resolve to cease the making of the draft Plan on the basis that the intensification of the agriculturally zoned land for non-agricultural activities is inconsistent with the character and present land-uses in the locality.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Having regard to the matters addressed in this report, previous reports and the public exhibition documentation the development is recommended for approval subject to conditions to ensure there is a distinct separation of the development from the existing tourist operation, a restriction on signage and stringent environmental conditions in relation to the operation of the crematorium. A crematorium and mortuary is not a desirable use in urban areas and a rural location remote from residential development is preferable. The grounds and garden setting of the site area is of a high standard and the location is central to the more populated areas of the Shire.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Council Report of 12 April 2006 (DW 1372310)
 2. Council Report of 2 May 2006 (DW 1381375)
 3. Copies of Public Submissions (DW 1537185)
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