

DELEGATED AUTHORITY DEVELOPMENT APPLICATION REPORT

DA No. DA07/0716

DATE 15/05/2008 10:54:00 AM

PROPERTY DESCRIPTION:

Lot 490 DP 1095234, Casuarina Way KINGSCLIFF

APPLICANT:

CROWN DEVELOPMENT

Mr P Fogarty

Manager

Crown Lands NSW

36 Marina Drive

COFFS HARBOUR JETTY NSW 2450

PROPOSAL:

A development application has been received from the Department of Lands to subdivide Lot 490 in to two lots.

The proposed lots are to be divided by Casuarina Way. Proposed Lot 1 (11.67 ha) located east of Casuarina Way and will be the site of a future tourist development. Proposed Lot 2 (11.15 ha) is located west of Casuarina Way and will be used for environmental rehabilitation and facilities such as walking trails and creek access.

Development of the proposed lots will be subject to future applications.

The subdivision does not propose any physical works. Normally Council would require physical connection to services such as water and sewer, yet following discussion with Council's Water & Sewer Engineer and Council's Development Engineer it was resolved that a restriction of user would be imposed on both lots, such that appropriate water and sewer services are provided at time of future development. This was considered necessary as the standard of service required at this stage is unknown. Appropriate conditions have been drafted for the Department of Lands approval as the Crown Authority.

DEFINITION AS PER EPI:

Subdivision

BUILDING

CLASSIFICATION:

SITE DETAILS:

Not applicable

Lot 490 lies on the banks of Cudgen Creek between Kingscliff village to the north, the "SALT" Development to the south and Lot 500 to the east.

The site is bisected by Lot 491 DP 1095234 which forms the Council public road known as Casuarina Way.

The coastal lands to the east are undeveloped littoral lands with frontage to the Pacific Ocean.

The western and north-western boundaries of Lot 490 are formed by the southern bank of Cudgen Creek. The riparian boundary of the site would occasionally experience inundation from the Creek.

The site has a total area of 22.82 ha

HISTORY:

Historically Lot 490 and Lot 500 were sand mined which degraded the topography of native vegetation. Regrowth vegetation has been established on the site since this time and subsequently a range of threatened species have been identified on the subject property.

The proposed subdivision is administrative in function and will not significantly disturb the vegetation or soil. Recommended conditions of consent are attached to this report.

Lot 490 was gazetted as Crown Reserve 1002202 for Tourist Facilities and Services on 6 November 1998. Council was the Trust Manager for Lot 490 until the Minister for Lands removed Council as the Trust Manager in 2004. The site is owned and managed by the Department of Lands. Consent was issued on 21 May 2004 for a public road and relocation of a water main (DA03/1851). A Management Plan was approved by the Minister for Lands on 16 August 2005.

The applicants state the following regarding the subdivision-

It is proposed to lease Lot 1 for the development of eco-tourism accommodation and associated community facilities. It is proposed to enhance the environmental values of the lands within Lot 2 by regeneration and restoration of degraded areas, and to provide for increased public access and asset protection measures, in association with the development of proposed Lot 1.

The Department were asked the following questions regarding the subdivision-

Q. What mechanisms are proposed by the Department to ensure the Management Plan objectives will be fulfilled with the "eco tourism" lot separated from the "environmental" lot. How is it proposed to commit the developer of proposed lot 1 to the work required in proposed lot 2 ie. lodgement of the required applications and supporting information, undertaking and timing of the work, monitoring, maintenance and financing.

A. *The development agreement for proposed Lot 1 is fairly specific with regards to the management initiatives to be employed within the riparian areas of Lot 2. These works will be the subject of the Development Application that will be lodged by the proponent during the lease implementation stage of the project. This subdivision is only the precursor to the project providing a basis for the lease.*

The actual lease details are confidential at this stage; and, the Department is considering the imposition of positive public covenants on the whole of the site. Whilst Lot 1 is to be the subject of the tourist development by a leaseholder, it will remain along with Lot 2 within the Crown reserve system and subject to the provisions of the Crowns Lands Act as well as the lease conditions.

Should you require specific details of the lease proposal [i.e. the non confidential aspects] please contact Phil Fogarty [Phil.Fogarty@lands.nsw.gov.au].

RECOMMENDATION:

That the application be approved subject to the attached conditions:-

Assessing Officer
Denise Galle
Date: 7 November 2008

RECOMMENDATION APPROVED

Determined by me in accordance with authority delegated by the General Manager dated 14 May 2007

Signed:
Lindsay McGavin

Dated: [ort]

ASSESSMENT UNDER SECTION 79(C)(1) OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

(a)(i) The Provisions of any Environmental Planning Instrument

Tweed Local Environmental Plan 2000

Zoning:-

The land is zoned part

- 2(f) Tourism;
- 7(a) Environment Protection (Wetlands Littoral Rainforests);
- 7(f) Environmental Protection (Coastal Lands).

Development Defined as:-

Subdivision

Permissibility:-

Item 2 permissible with consent

Specific Clauses:-

Clause 8 - Zone objectives

(1) The consent authority may grant consent to development (other than development specified in Item 3 of the Table to clause 11) only if:

The subject site is primarily zoned 2(f) Tourism, with the riparian edge zoned 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and a very small section of the south eastern corner of the site zoned 7(f) Environmental Protection (Coastal Lands).

(a) it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and

The proposed subdivision alignment would traverse that part of the sit zoned 2(f) Tourism.

(b) it has considered those other aims and objectives of this plan that are relevant to the development, and

Notwithstanding as the proposed subdivision affects land zoned 7(a) and 7(f) the application requires the concurrence of the Director of the Department of Planning and approval form DPI (Fisheries) and DECC. Such concurrence and approval has been received.

(c) it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.

The objectives of the 2(f) zone are as follows: -

Primary objectives

- to encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.
- to ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.

Secondary objective

- to permit high quality residential development as being integral and supportive of the primary intent of this zone (tourist orientated development) in terms of design and management structure and only at a scale which enhances the proposed tourist resort character.

The aims of this plan are:

(a) to give effect to the desired outcomes, strategic principles, policies and actions of the *Tweed Shire 2000+ Strategic Plan* which was adopted, after extensive community consultation, by the Council on 17 December 1996, the vision of which is:

“The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”, and

(b) to provide a legal basis for the making of a development control plan that contains more detailed local planning policies and other provisions that provide guidance for future development and land management, such as provisions recommending the following:

The objectives of the 7(a) zone are as follows:

Primary objectives

- to identify, protect and conserve significant wetlands and littoral rainforests.
- to prohibit development which could destroy or damage a

(i) that some or all development should be restricted to certain land within a zone,

(ii) that specific development requirements should apply to certain land in a zone or to a certain type of development,
(iii) that certain types or forms of development or activities should be encouraged by the provision of appropriate incentives, and

(c) to give effect to and provide reference to the following strategies and policies adopted by the Council:

Tweed Heads 2000+ Strategy
Pottsville Village Strategy, and

(d) to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities.

An objective of this plan is to promote development that is consistent with the four principles of ecologically sustainable development.

Clause 15 - Essential Services

wetland or littoral rainforest ecosystem.

Secondary objectives

- to protect the scenic values of wetlands and littoral rainforests.
- to allow other development that is compatible with the primary function of the zone.

The objectives of the 7(f) zone are as follows: -

Primary objectives

- to identify land susceptible to coastal erosion and protect it from inappropriate development.
- to protect and enhance the scenic and environmental values of the land.

Secondary objective

- to allow for other development that is compatible with the primary function of the zone.

The proposal is not contrary to the objective of the zones. The proposed subdivision alignment is consistent with the location of the road, and consistent with the Plan of Management for Lot 490 which details that Lot 1 will be developed for eco-tourism accommodation and associated community facilities, while Lot 2 is proposed to enhance the environmental values of the lands regeneration and restoration of degraded areas, and to provide for increased public access and asset protection measures, in association with the development of proposed Lot 1.

Having regard to Clause 8 of the Tweed LEP 2000 the proposed subdivision is considered to facilitate the proper and orderly development of Lot 490 and subsequently satisfies the zones objectives, and the aims and objectives of the LEP itself. The proposed subdivision will have no negative cumulative impact as future development of the site will be subject to further consideration within forthcoming Development Applications.

The site has potential access to the reticulated water and sewer system, with a low voltage electricity line traversing the site and a telecommunications optic fibre cable on site.

The subdivision does not propose any physical works. Normally Council would require physical connection to services such as water and sewer, yet following discussion with Council's Water & Sewer Engineer and Council's Development Engineer it was resolved that a restriction of user would be imposed on both lots, such that appropriate water and sewer services are provided at time of future development. This was considered necessary as the standard of service required at this stage is unknown. Appropriate conditions have been drafted for the Department of Lands approval as the Crown Authority.

Furthermore, Lot 1 and 2 will be subject to easements to drain water with respect to the Council Public Road pursuant to DP 1095234.

Comment is made within the submitted Subdivision Information Statement that “future development of proposed Lot 1 will impact on Lot 500 DP 727420 as part of that lot may be required to augment community facilities and access”. This will be subject to future development applications.

Clause 16 - Height of Building

Not applicable to the subdivision of the site.

Clause 17 - Social Impact Assessment

Not applicable to the subdivision of the site.

Clause 35 - Acid Sulfate Soils

Not applicable to the subdivision of the site.

Other Specific Clauses

Clause 20 of the Tweed LEP 2000 states that subdivision of 7(a) land can only be granted if the area of each allotment to be created is at least 40ha. However, consent can be granted if the land will be used for a purpose other than for agricultural or residential purposes.

The subject site comprises 3 zonings primarily the 2(f) tourism zone. The small sections of 7(a) land will remain connected to one another and will be entirely within proposed Lot 2. Given there is no change to the proportion of land zoned 7(a) and that this section of the site (proposed Lot 2) will be used for environmental management Clause 20 is not considered to apply.

Clause 21A of the Tweed LEP 2000 states that subdivision of 7(f) land can only be granted if the area of each allotment to be created is at least 40ha. However, consent can be granted if the land will be used for a purpose other than for agricultural or residential purposes.

The subject site comprises 3 zonings primarily the 2(f) tourism zone. The small sections of 7(f) land will remain connected to one another and will be entirely within proposed Lot 1. Given there is no change to the proportion of land zoned 7(f) and that this section of the site (proposed Lot 1) will be used for tourist development Clause 21A is not considered to apply.

Clause 25 of the Tweed LEP requires submission consideration of the environmental significance of the site and lodgement of a management plan for development of land zoned 7 (a) or on land adjacent to 7 (a) zoned land. Referral is also required to the Department of Fisheries and the Department of Environment and Climate Change.

The Lot 490 Plan of Management was approved by the Minister on 16 August 2005.

The proposed subdivision does not involve any physical work and therefore no negative environmental impact is envisaged.

The Department of Primary Industries (Fisheries) accepts that the subdivision is primarily an administrative matter and the Department raises no objection to the proposal. DPI noted the 50 metre setback to Creek for future stages but indicates that

this needs to be measured from the creek edge not the centre alignment of the creek.

The Department of Environment & Climate Change reviewed the application and reinforced Council's statutory obligation to consider the applicable legislation. No objection to the proposed subdivision was received.

Clause 27 of the Tweed LEP requires concurrence from the Director of the Department of Planning for development in the 7 (f) zone.

The Department of Planning granted concurrence for the proposed subdivision as it will not affect the beach, dune, or foreshore, to the Pacific Ocean adjacent to the lot. In addition the Department stated that the subdivision would not impact the landscape and scenic quality of the 7(f) land.

Clause 31 of the LEP requires consideration of a number of issues regarding development that adjoins water bodies. The proposed subdivision is unlikely to adversely affect Cudgen Creek given that minimal works are proposed to facilitate the subdivision.

Clause 34 Flooding – as part of the application for the road the applicants installed twin 1200 x 600 RCBC under Casuarina Way at chainage 1650. The culverts have been designed to cater for a Q100 event. This is considered satisfactory for the proposed subdivision with further assessment required at the time of future development of the site.

Clause 35 - Acid Sulfate Soils mapping indicates the site is subject to Class 3 and Class 4 soils. However, the proposed subdivision will involve no disturbance of the soil. Standard conditions of consent to manage acid sulphate soils have been recommended in case of minimal disturbance.

Clause 36 of the LEP requires Council to consider coastal erosion. The proposed subdivision is unlikely to impact on coastal erosion processes or be affected by coastal erosion processes.

The Tweed Coast Hazard Study indicates that the 1 in 100 year hazard is seaward of all properties in this location.

Clause 39 – Contamination - The site has previously been surveyed for radioactive residues from sand mining. The action limit is 2.5uGy/hr. The measured levels were 0.1-0.2 uGy/hr. This reasonably demonstrates that radiation levels are currently at or near background. To ensure that radioactive material is not exposed during works a post earth work validation requirement will be applied.

Clause 39A requires consideration of the proposed development having regard to the planning principals for development within bushfire prone Land. The subdivision is proposed within bushfire prone land and subsequently required referral to the Rural Fire Service as Integrated Development.

The NSW Rural Fire Service has granted a bushfire safety authority with no General Terms of Approval.

Clause 54 Tree Preservation Order

The development area is subject to a Tree Preservation Order

1990 & 2004. The proposed subdivision involves minimal works to accommodate services and thus has minimal impact on vegetation.

Given the context within which the subdivision is proposed (i.e. in accordance with Lot 490 Management Plan), it is considered that removal of the minimal vegetation (if any) to facilitate the proposed works is acceptable.

STATE ENVIRONMENTAL PLANNING POLICIES (IF APPLICABLE TICK BOX AND PROVIDE COMMENTS AT END)

- SEPP No. 1 - Development Standards
- SEPP No. 4 - Development Without Consent
- SEPP No. 6 - Number of Storeys in a Building
- SEPP No. 8 - Surplus Public Land
- SEPP No. 9 - Group Homes
- SEPP No. 11 - Traffic Generating Developments
- SEPP No. 14 - Coastal Wetlands
- SEPP No 15 - Rural Landsharing Communities
- SEPP No. 16 - Tertiary Institutions
- SEPP No. 21 - Caravan Parks
- SEPP No. 22 - Shops and Commercial Premises
- SEPP No. 26 - Littoral Rainforests
- SEPP No. 27 – Prison Sites
- SEPP No. 30 - Cattle Feedlots and Piggeries
- SEPP No. 32 - Urban Consolidation (Redevelopment of Urban Land)
- SEPP No. 33 - Hazardous and Offensive Development
- SEPP No. 34 - Major Employment-Generating/Industrial Development
- SEPP No. 35 - Maintenance Dredging of Tidal Waterways
- SEPP No. 36 - Manufactured Home Estates
- SEPP No. 44 - Koala Habitat Protection
- SEPP No. 48 - Major Putrescible Landfill Sites
- SEPP No. 50 - Canal Estate Developments
- SEPP No. 55 - Remediation of Land
- SEPP No. 62 – Sustainable Aquaculture
- SEPP No. 64 – Advertising and Signage
- SEPP No. 65 - Design Quality of Residential Flat Development
- SEPP No 71 – Coastal Protection
- SEPP (Seniors Living) 2004
- SEPP (State Significant Development) 2005
- SEPP (Mining, Petroleum Production and Extractive Industries) 2007

Comment

SEPP 14

The subject site is affected by a small mapped area of SEPP 14 land within and adjoining Cudgen Creek. The proposed two lot subdivision does not propose any works within this mapped SEPP 14 land and therefore no negative impact are envisaged for the quality of the wetland.

SEPP 71

SEPP 71 requires a Master Plan (or DCP) where subdivision of residential land is proposed in sensitive coastal locations. The requirement for a DCP may be waived by the Department on request. Advice provided by the Department of Planning via letter dated 19 March 2008 states that pursuant to clause 18(2) of SEPP 71, the need for a master plan (or DCP) has been waived.

The proposal is in accordance with clause 8 – matters for consideration as the application is for subdivision only with no building works proposed.

The proposal is considered to satisfy the relevant provisions contained within this policy.

North Coast Regional Environmental Plan 1988 (NCREP 1988) (if applicable tick box and provide comments at the end)

- Clause 12: Impact on agricultural activities
- Clause 15: Rivers, streams and wetlands
- Clause 18: Extractive industry
- Clause 18A: Mineral sands mining
- Clause 29A: Natural areas and water catchment
- Clause 32B: Coastal Lands
- Clause 33: Coastal hazard areas
- Clause 36: Heritage items, generally
- Clause 36A: Heritage items of state & regional significance
- Clause 36B: Heritage items of regional significance
- Clause 36C: Conservation areas of state & regional significance
- Clause 36D: Advertising heritage applications
- Clause 43: Residential development
- Clause 47 Principles for Commercial and Industrial Development
- Clause 51: Directors concurrence for tall buildings
- Clause 66: Adequacy of community and welfare services
- Clause 75: Tourism development
- Clause 76: Natural tourism areas
- Clause 81: Development adjacent to the ocean or a waterway
- Clause 82: Sporting fields or specialised recreation facilities

Clause 32B Development control—coastal lands

The proposal is considered not to negate the objectives of the following policies;

- (a) the NSW Coastal Policy 1997,
- (b) the Coastline Management Manual, and
- (c) the North Coast: Design Guidelines.

The proposed development is considered not to contravene the objectives of Clause 32B by creating any significant adverse effects to the public access to the foreshore, create overshadowing to beaches, waterfront open space before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time).

Clause 43 of NCREP 1988 provides that the consent authority shall consider density, environmental constraints, and road widths.

The proposed subdivision is considered to be a reasonable response to the Plan of Management and will not result in the creation of any adverse physical impacts upon the locality. Further, the existing road widths are satisfactory for the proposal and a detailed sedimentation and erosion control plan will be applied in relation to the construction.

The proposal is considered to be consistent with the relevant provisions of Clause 43 of NCREP 1988.

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

Exhibited Draft Local Environmental Plan (list any plan/s & provide comments)

Nil applicable

Exhibited Draft State Environmental Planning Policies or Regional Environmental Plan/s

In what ways does the draft impact on the proposal?

Nil applicable

(a)(iii) Any Development Control Plan

Development Control Plans (if applicable tick box and provide comment at end of list)

WHOLE OF SHIRE

- A1-Multi-Dwelling Housing and Tourist Accomodation (DCP6)
- A2-Site Access and Parking Code (DCP2)
- A3-Development of Flood Liable Land (DCP5)
- A4-Advertising Signs Code (DCP15)
- A5-Subdivision Manual (DCP16)
- A6-Biting Midge and Mosquito Control (DCP25)
- A7-Child Care Centres (DCP26)
- A8-Brothels Policy (DCP31)
- A9-Energy Smart Homes Policy (DCP39)
- A10-Exempt and Complying Development (DCP40)
- A11-Public Notification of Development Proposals (DCP42)
- A12-Dual Occupancy Controls (DCP44)
- A13-Socio-Economic Impact Assessment (DCP45)
- A14-Cut and Fill on Residential Land (DCP47)

SPECIFIC SITES

- B1-Terranora (DCP1)
- B2-Tweed Heads (DCP18)
- B3-Banora Point West- Tweed Heads South (DCP3)
- B4-West Kingscliff (DCP9)
- B5-Casuarina Beach (DCP11)
- B6-Murwillumbah West (DCP14)
- B7-Cobaki Lakes (DCP17)
- B8-Keith Compton Drive (DCP19)
- B9-Tweed Coast Strategy (DCP51)
- B10-Koala Beach (DCP21)
- B11-Seaside City
- B12-Fraser Drive, Banora Point (DCP24)
- B13-Marana Park Estate Density Controls (DCP28)
- B14-Peter Street (South) Residential Development Controls (DCP32)
- B15-Seabreeze Estate, Pottsville (DCP38)
- B16-Kingscliff (DCP43)
- B17-Planning Controls - Friday Island, Bogangar (DCP52)
- B18-Tweed Coast Building Heights (DCP48)
- B19-Bogangar / Cabarita Beach Locality Plan (DCP50)
- B20-Uki Village

Comment

Section A5 Development Control Plan 16 – Subdivisions

3.2 Master Plans

A Master Plan is required under s3.1.1 pursuant to SEPP 71 where subdivisions are in a sensitive coastal location. The need for a Master Plan has been waived by the Department of Planning via letter dated 19 March 2008.

4.2 Physical constraints

The proposed subdivision is consistent with the physical constraints of the site namely the location of Casuarina Way.

4.1 Lot Layout

The policy recommends a minimum lot size of 450m² containing a building platform with minimum dimension of 10m x 15m, low density single dwellings are discouraged.

The proposed lots will facilitate future development in accordance with the sites Plan of Management.

4.3.5 Infrastructure

Subject to the recommended conditions the site is considered to be adequately serviced with water, sewer, stormwater, telecommunications and electricity.

The proposal is considered consistent with Council subdivision policy.

Section B9 – Tweed Coast Strategy

The Tweed Coast Strategy sets out guidelines for people wanting to develop within this area. The policy focuses on encouraging pedestrian links and managing the coast for all of the community. The proposed subdivision does not contradict the intentions of this document but rather forms a basis for the ongoing development of lot 490.

Section B18 – Tweed Coast Building Heights

The Tweed Coast Building Height plan sets out height guidelines for people wanting to develop within this area. The proposed subdivision does not include construction of any buildings and therefore assessment against B18 will become relevant at later stages of the Lot 490 development.

(a)(iv) Any Matter Prescribed by the Regulation (Clause 92, 92A 93 & 94)

Primary matters

- Clause 92(a) Government Coastal Policy

Specific Considerations

Does the policy apply and if so what are the implications?

Comment

NSW Government Coastal Policy 1997

As a function of the sites proximity to the coast, the NSW Government Coastal Policy affects the subject site. In this regard, the proposed development is considered to be consistent with the design and locality objectives of the Coastal Policy.

- Clause 92(b) Applications for demolition

What are the implications of Australian Standard AS 2601-1991?

Comment

Not applicable to subdivision

- Clause 93 Fire Safety Considerations

Is the application for a change of use of an existing building?

No

- Clause 94 Buildings to be upgraded

Is the application for rebuilding, alteration, enlargement or extension of an existing building?

No

(b) The Likely Impacts of that Development, including Impact on both the Natural and Built Environment, and Social and Economic Impacts in the Locality

(Provided below is a list of matters to be used as a guide in assessing the impacts of the development. Tick the significant matters relevant to the application and provide comments below. This list is not inclusive and any other matters relevant to the application should also be listed and assessed. Matters not ticked are considered satisfactory in terms of the application)

Context and Setting

- Access, Transport and Traffic
- Public Domain
- Utilities
- Heritage
- Farmland of State or Regional significance (Section 117(2) Direction 14 dated 30 September 2005 (Refer to Council resolution of 25 July 2006))
- Other Land Resources
- Water
- Soils
- Air and Microclimate
- Flora and Fauna
- Waste
- Energy
- Noise and Vibration
- Natural Hazards
- Technological Hazards
- Social Impact in Locality
- Economic Impact in Locality
- Site Design and Internal Design
- Construction
- Cumulative Impacts
- Crime prevention
- Impact on Oyster Industry (refer to NSW Government Oyster Industry Sustainable Aquaculture Strategy 2006)

List any other matters considered relevant

There are no additional matters of relevance

Assessment of matters identified above

The above report has demonstrated that the proposed subdivision is administrative in function to facilitate the future development of Lot 490 in accordance with the Plan of Management approved for the site. No additional assessment is considered applicable.

(c) The Suitability of the Site for the Development

(Provided below is a list of matters to be used as a guide in considering the suitability of the site for the development. Tick the significant matters relevant to the application and provide comments below. This list is not inclusive and any other matters relevant to the application should also be listed and assessed. Matters not ticked are considered satisfactory in terms of the application)

- Surrounding Land Uses/Development
- Availability of Utilities & Services
- Ambient Noise Levels
- Natural Hazards including Flooding, Tidal Inundation, Subsidence, Slip, Mass Movement and Bushfire
- Soil Characteristics
- Site Orientation
- Topography
- Contamination
- Site Drainage
- Resource Value
- Fauna or Flora

- Effluent Disposal
 Farmland of State or Regional significance (Section 117(2) Direction 14 dated 30 September 2005)

List any other matters considered relevant

There are no additional matters of relevance

Assessment of matters identified above

The above report has demonstrated that the proposed subdivision is administrative in function to facilitate the future development of Lot 490 in accordance with the Plan of Management approved for the site. The subdivision responds to the site (in particular the location of Casuarina way) and is functional for the future development of the site.

(d) Any Submissions made in Accordance with the Act or Regulations

Public Submissions Comment

The proposed two lot subdivision was not required to be advertised or notified.

Public Authority Submissions Comment

The development was referred to various government agencies. No objections were received from the relevant authorities as detailed in the above report. The recommended conditions of consent have been forwarded to the Department of Lands (as the Crown applicant) and after consultation the recommended conditions are now attached.

Furthermore, the application was referred to Council's Jane Lofthouse (Natural Resource Management Unit) and Graham Burton (Recreation Services Unit) who have no objection to this subdivision. Both have suggested that both newly created Lots should continue to be managed consistent with the 'Lot 490 Plan of Management'. Furthermore they believe that this subdivision should not allow future use of one or other of these Lots to be altered from the uses proposed in the Plan of Management. Appropriate conditions have been recommended.

NOTE: (1) *If the development is likely to directly or indirectly impact upon State Significant Farmland as referred to in the "Northern Rivers Farmland Protection Project, Final Map 2005 (Section 117(2) Direction), then the application will need to be referred to the Regional Office of the Department of Primary Industry for comment (Council resolution of 25/7/2006)*

Not applicable to the subject site.

(2) *If the development may affect a priority oyster aquaculture area or oyster aquaculture outside such an area the application will require referral to the Director General of the Department of Primary Industry in accordance with NSW Oyster Industry Sustainable Aquaculture Strategy 2006.*

Not applicable to the subject site.

(e) The Public Interest

In assessing public interest, consideration should be given to any government interests and community interests having regard to any policy statements, planning studies, guidelines, management plans, advisory documents, public meetings and enquiries held, public submissions, public health and safety etc. Attached as appendix 1 is a list of documents which may be of relevance. This list is by no means inclusive).

Assessment

Lot 490 is a key Tweed Coast site. The successful development of Lot 490 in accordance with its reserve designation and management status relies on the proposed subdivision.

Subject to the proposed conditions of consent, the subdivision complies with all applicable provisions and is considered to be in accordance with the public interest, with no significant impacts anticipated.

Section 94 Contributions Plan (tick if relevant)

<input type="checkbox"/>	Plan No. 1 - Version 6	Banora Point West/Tweed Heads South - Open Space Contribution
<input type="checkbox"/>	Plan No. 2 - Version 3.2	South Tweed Heads - Master Plan Drainage Contribution
<input type="checkbox"/>	Plan No. 3 - Version 2	Banora Point West/Tweed Heads South - Community Facilities
<input type="checkbox"/>	Plan No. 4 - Version 3.2	Tweed Road Contribution Plan
<input type="checkbox"/>	Plan No. 5 - Version 2.1	Open Space Contribution
<input type="checkbox"/>	Plan No. 6 - Version 1.1	Street Tree Planting in Residential Areas
<input type="checkbox"/>	Plan No. 7 - Version 1.1	West Kingscliff
<input type="checkbox"/>	Plan No. 10	Cobaki Lakes Public Open Space & Community Facilities
<input type="checkbox"/>	Plan No. 11 - Version 1.0	Library Facilities
<input type="checkbox"/>	Plan No. 12 - Version 1.0	Bus Shelters
<input type="checkbox"/>	Plan No. 13 - Version 1.0	Cemetery/Crematorium Facilities at Eviron Road, Duranbah
<input type="checkbox"/>	Plan No. 14 - Version 1.0	Rural Road Upgrading, Mebbin Springs
<input type="checkbox"/>	Plan No. 15 - Version 1.0	Developer Contributions for Community Facilities
<input type="checkbox"/>	Plan No. 16 - Version 1.0	Emergency Facilities (Surf Lifesaving)
<input type="checkbox"/>	Plan No. 18 - Version 1.0	Council Administration Offices & Technical Support Facilities
<input type="checkbox"/>	Plan No. 19 – Version 1.0	Kings Beach/Kings Forest
<input type="checkbox"/>	Plan No. 20 – Version 1.0	Public Open Space at Seabreeze Estate
<input type="checkbox"/>	Plan No. 21 – Version 1.0	Terranora Village Estate
<input type="checkbox"/>	Plan No. 22 – Version 1.0	Cycleways
<input type="checkbox"/>	Plan No. 23 – Version 1.0	Off site Parking
<input type="checkbox"/>	Plan No. 26 – Version 1.0	Regional Open Space
<input type="checkbox"/>	Plan No. 27 – Version 1.0	Tweed Heads Master Plan - Local Open Space/Streetscaping
<input type="checkbox"/>	Plan No. 28 – Version 1.0	Seaside City

The proposed development seeks to subdivide one allotment into two parcels. both parcels will be required to have connection to water and sewer services at a later stage but not as a result of this subdivision.

The existing land parcel would have 1ET land credit for all s94 contributions. This 1ET land credit will stay with proposed lot 1 as this is the only allotment that will have tourist accommodation. The additional allotment created as part of this subdivision may not attract additional S94 Contributions as proposed lot 2 is intended for use as an environmental management lot only and therefore at this stage proposed lot 2 does not attract any S94 Contributions.

In regards to s64 contributions for water and sewer Council's Rates Department have advised that Lot 490 is listed as a non-ratable property as it is vacant crown land owned by the Department of Natural Resources. As such to date it hasn't been charged for water or sewerage access charges. Therefore no ET credit exists for either water or sewer.

Consultation with Council's Water & Sewer Design Engineer - Peter Pennicuik and Council's Development Engineer - Mick Denny has indicated that restrictions as to user will ensure future development of the site will attract water and sewer contributions and that no credit exists for the current allotments with regards to water and sewer..

Therefore DRAFT Conditions have been sent to the Department with no contributions applicable at this stage.

Consideration of Section 5A of the Environmental Planning & Assessment Act, 1979

Having considered the eight points listed in Section 5A of the Environmental Planning & Assessment Act, 1979, it is considered the proposal – **Will Not** – (Will/Will Not) not have a significant effect on threatened species, populations or ecological communities, or their habitat.

APPENDIX 1

USEFUL DOCUMENTS RELEVANT TO ASSESSMENT UNDER SECTION 79(C)(1) OF THE Environmental Planning & Assessment Act, 1979

Volume One

- * **Tweed Shire Council Strategic Plan**
- * **Tweed Heads 2000+**
A Strategy for the Tweed Heads Central Area, Tweed Shire Council
- * **Social Plan - Tweed Shire 1996**
Community Directions for the Tweed. Tweed Shire Council 1996
- * **Infrastructure Provision: Tweed Development Program**
Tweed Shire Council
- * **Residential Development Strategy**
Tweed Shire Council
- * **Draft Open Space and Recreation Strategy**
Tweed Shire Council
- * **North Coast Urban Planning Strategy Into the 21st Century**
NSW Government: Department of Planning
- * **Chinderah Local Environmental Study**
The GeoLINK Group
- * **Cudgen Nature Reserve Plan of Management**
NSW National Parks and Wildlife Service
- * **Pottsville Village Strategy: October 1998**
Tweed Shire Council

Volume Two

- * **Managing Land Contamination: Planning Guidelines SEPP55 - Remediation of Land, 1998**
Department of Urban Affairs and Planning & EPA
- * **Environmental Management Guidelines for Solid Waste Landfills (draft 1994)**
Environment Protection Authority
- * **Contaminated Land Policy**
Tweed Shire Council
- * **DIPMAC Sites: Guidelines for Consultants Reporting on Contaminated Sites**
Environment Protection Authority
- * **DIPMAC Guidelines for Assessing Developments within 200 metres of Cattle Tick Dip Sites**
Prepared for Cattle Dip Site Management Committee
- * **Rabbit Farming: Planning and Development Control Guidelines**
NSW Agriculture
- * **Koala Habitat Atlas: Project No. 4, Tweed Coast**
Prepared for Tweed Shire Council
- * **Rural Settlement Guidelines: Guidelines for Rural Settlement on the North Coast of NSW**
Department of Urban Affairs and Planning
- * **Planning for Bush Fire Protection: A guide for land use planners, etc. May 1991**
Department of Bush Fire Services
- * **Tourism Development Near Natural Areas: Guidelines for the North Coast**
Department of Planning
- * **Tweed Shire Council: Policy on Road Naming**
Tweed Shire Council

- * **Tweed Shire Council: Policy on Development in Flight Path**
Tweed Shire Council

Volume Three

- * **Australian Water Quality Guidelines for Fresh and Marine Waters. November 1992**
Australia and NSW Environment Conservation Council
- * **Coastline Management Manual**
NSW Government
- * **Tweed River Water Quality Review**
WBM Oceanics Australia
- * **Tweed River Estuary Bank Management Plan, November 1998**
Tweed River Manager Plan Advisory Committee
- * **Estuary Management Plan: Cudgen, Cudgera and Mooball Creeks, August 1997**
Tweed Shire Council & WBM Oceanics Australia
- * **Cobaki Broadwater Management Plan, 1998**
Tweed Shire Council
- * **Terranora Broadwater Management Plan, 1994**
Tweed Shire Council
- * **Upper Tweed Estuary Management Plan**
Tweed Shire Council
- * **Floodplain Development Manual**
NSW Government

Volume Four

- * **Tweed Vegetation Management Plan: Report & Appendices: July 1999**
Prepared for Tweed Shire Council
- * **Tweed Shire Council: Landscape Evaluation Report, November 1995**
Catherine Brouwer Landscape Architect
- * **Tweed Coast Littoral Rainforest Draft (SEPP26) Management Plan**
Prepared for Tweed Shire Council

Ministerial Directions

Section 76A Kings Beach
 Koala Beach
 Artificial Waterways
 Extractive Industries

Section 94A Development Contributions - SEPP5 development



Department of Lands

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1 July 2008

Dear Ms Galle

**RE Development Application DA 07/0716 Subdivision Lot 490 DP 1095234
Kingscliff**

Thank you for your letter dated 4 June 2008 in response to Lands' letter of objection to certain draft conditions of consent. I also appreciate the opportunity to discuss the matter further with you and engineering staff after submitting a draft letter 12 June 2008.

I have consulted Lands' planning and policy experts and I am advised that the conditions of consent should relate only to the development application. Further the notion of a development contribution should only arise after consideration of proposed development (construction) and relate to an approved development contributions plan.

The subject development application is for the administrative purpose of registering a lease to enable implementation of an adopted Plan of Management to which Council was a supportive party.

Consequently Lands maintains its objection to conditions 6a, 6b and 7 in the draft conditions of consent.

A development application (Major Project) has been lodged by Leighton Properties P/L with the Minister for Planning and due process by Planning will invite Council's detail considerations of its requirements in terms of environmental assessment and conditions of consent.

Notwithstanding I have set out a more explicit set of objections to the draft conditions proposed for DA 07/0716 in attachment.

Lands is not willing to accept Councils justification for the imposition of draft conditions 6a, 6b and 7 and maintains its view that they are inappropriate. Would you please delete these conditions and provide a final approval at your earliest convenience.

Yours sincerely

Phil Fogarty
Program Manager
Commercial Projects, Crown Lands Division



Attachment to letter from lands to TSC 12 June 2008-06-12

RE Development Application DA 07/0716 Subdivision Lot 490 DP 1095234 Kingscliff

Proposed Condition	Lands' objection
<p>Condition 6 a) Easements for services and drainage on private property, including an easement over the existing sewer rising main within the south western corner of the subject allotment, as identified within Lot 490 DP 1095234 by survey</p>	<p>The easement over the existing sewer rising main alluded to in proposed Condition 6 (a) is the subject of works being undertaken by the developer adjoining on the south. That party is responsible for undertaking the survey and acquiring any interest in the land that is required to preserve the asset. Other existing easements related to drainage will be preserved – the proposed plan will not affect those easements No new easements are proposed at this time This condition is inappropriate</p>
<p>Condition 6 (b) Restrictions on use, including but not limited to the following:</p>	
<p>Prior to any development of either of proposed Lots 1 or 2, a Sewerage and Water Management Plan must be submitted to and approved by Tweed Shire Council, confirming how these lots will be appropriately serviced.</p>	<p>There is no development proposed in this application. Councils "standard" condition is superfluous in this case. Future development will be subject of a separate DA and appropriate conditions relating to services and infrastructure should attach to that development consent.</p>
<p>Council's existing 450mm dia water main within the Casuarina Way road reserve shall be extended to the bridge crossing of Cudgen Creek on an approved alignment, at the time of any development of either of proposed Lots 1 or 2, whichever being the first.</p>	<p>There is no development proposed in this application. This condition is inappropriate Future development will be subject of a separate DA and appropriate conditions relating to services and infrastructure should attach to that development consent</p>
<p>If not already installed at the time of first development of either of proposed Lots 1 or 2, an appropriately sized sewer rising main shall be extended through the existing 400mm dia steel enveloping conduit under Cudgen Creek and connected to the existing 225mm dia PVC PN16 sewer rising main either side of the conduit.</p>	<p>There is no development proposed in this application. This condition is inappropriate Future development will be subject of a separate DA and appropriate conditions relating to services and infrastructure should attach to that development consent</p>
<p>Proposed Lot 2 is to have a minimum 50m buffer to Cudgen Creek (measured from mean high water mark).</p>	<p>The Plan of Management prescribes that this area will be retained for environmental protection and passive recreation. The PoM recognises the Estuary Management Plan. DPI accepts the administrative nature of the sub division and has flagged its interest in reconciling the 50 m buffer in future detail planning and development proposals. There is no development proposed in this application. This condition is inappropriate Future development will be subject of a separate DA and appropriate conditions relating to environmental management should attach to that development consent</p>
<p>Pursuant to Section 88BA of the Conveyancing Act (as amended) the instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.</p>	<p>There is no easement proposed This condition is inappropriate</p>

<p>Any Section 88d instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council</p>	<p>There is no easement proposed</p> <p>Existing easements are preserved</p> <p>This condition is inappropriate</p>
<p>Condition 7 Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Council within three months of registration of the Subdivision Certificate in accordance with the Survey Practices Regulation.</p>	<p>The application stated that the plan of subdivision is a compiled plan.</p> <p>This means that the plan details are compiled from existing survey plans and no new survey is necessary. There will be no survey marks placed.</p> <p>Therefore the Survey Practices Regulation does not apply.</p> <p>This condition is inappropriate</p>



Department of Lands

Land Administration & Management
Property & Spatial Information

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28 July 2008

Dear Ms Galle

Casuarina Way

**RE Development Application DA 07/0716 Subdivision Lot 490 DP 1095234
Kingscliff**

1852795

I refer to my previous letter 1 July 08 and thank you and your colleagues for attending a briefing on 9 July about the lease structure and development proposal affecting Lot 490.

We note Council's preparedness to delete draft conditions 6a and 7 but are resolved to require notation on title in respect of water and sewerage requirements.

Arising from our latest discussions were two options for a solution. Regrettably the alternatives proposed are not feasible and I have set out the reasons in the attached table.

Lands therefore seeks development consent to the subdivision as proposed and maintains its strong view that Council's draft conditions requiring restrictions or notation on title in respect to water and sewerage infrastructure is not appropriate – being development matters that should be resolved through the development assessment process.

As a further option we suggest that Council could include their infrastructure requirements on the s149 certificate which is a legal document that sets out all the constraints on a property.

We request please that Council remove the draft conditions requiring notation on title and finalise the consent. Alternatively we understand that council may choose to invite Department of Planning to mediate on the matter.

Yours sincerely

Phil Fogarty
Program Manager
Commercial Projects
Crown Lands Division



ATTACHMENT TO LETTER – LANDS TO TSC – 28 July 2008

Options to imposing draft conditions of consent – discussed 9 July 2008	Lands Comment
<p>A memorandum of agreement between Lands, Council and Leighton regarding infrastructure requirements</p>	<p>Until the development is finalised and a DA is submitted, it is impossible to calculate the exact infrastructure and contributions that would be required, so it would be difficult to come up with any agreement other than a very generalised agreement by Leightons acknowledging that there is an obligation to contribute towards certain infrastructure, to be further negotiated at a later stage.</p> <p>Council acknowledge that certain credits for development contributions may accrue given the community benefits proposed by Leighton which further illustrates the iterative process in finalising any agreement.</p> <p>This option is not supported because of the likely protracted nature of securing an agreement</p>
<p>Lands to register the lease against the current title</p>	<p>The lease is structured to grant exclusive possession over the Premises while granting a license only over Surrounding Land to investigate, construct and maintain agreed works (community facilities and environmental rehabilitation).</p> <p>The public has right of access over the surrounding land.</p> <p>If the lease is registered against the current title then it amounts to the grant of exclusive possession over the whole of Lot 490.</p> <p>Complex changes to the lease document are required if this option is to be pursued, and this is not feasible given that the lease document has already been executed.</p>