



COFFS HARBOUR CITY COUNCIL

ORDINARY MEETING

**COUNCIL CHAMBERS
COUNCIL ADMINISTRATION BUILDING
COFF AND CASTLE STREETS, COFFS HARBOUR**

6 MARCH 2008

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COFFS HARBOUR CITY COUNCIL

ORDINARY MEETING

6 MARCH 2008

Mayor and Councillors

LAND USE HEALTH & DEVELOPMENT DEPARTMENT REPORT

L1 DEVELOPMENT APPLICATION 808/07 - FOR CATTERY & DOG BOARDING KENNELS, LOT 4, DP 553165, NO. 59 GAUDRONS ROAD, SAPPHIRE BEACH

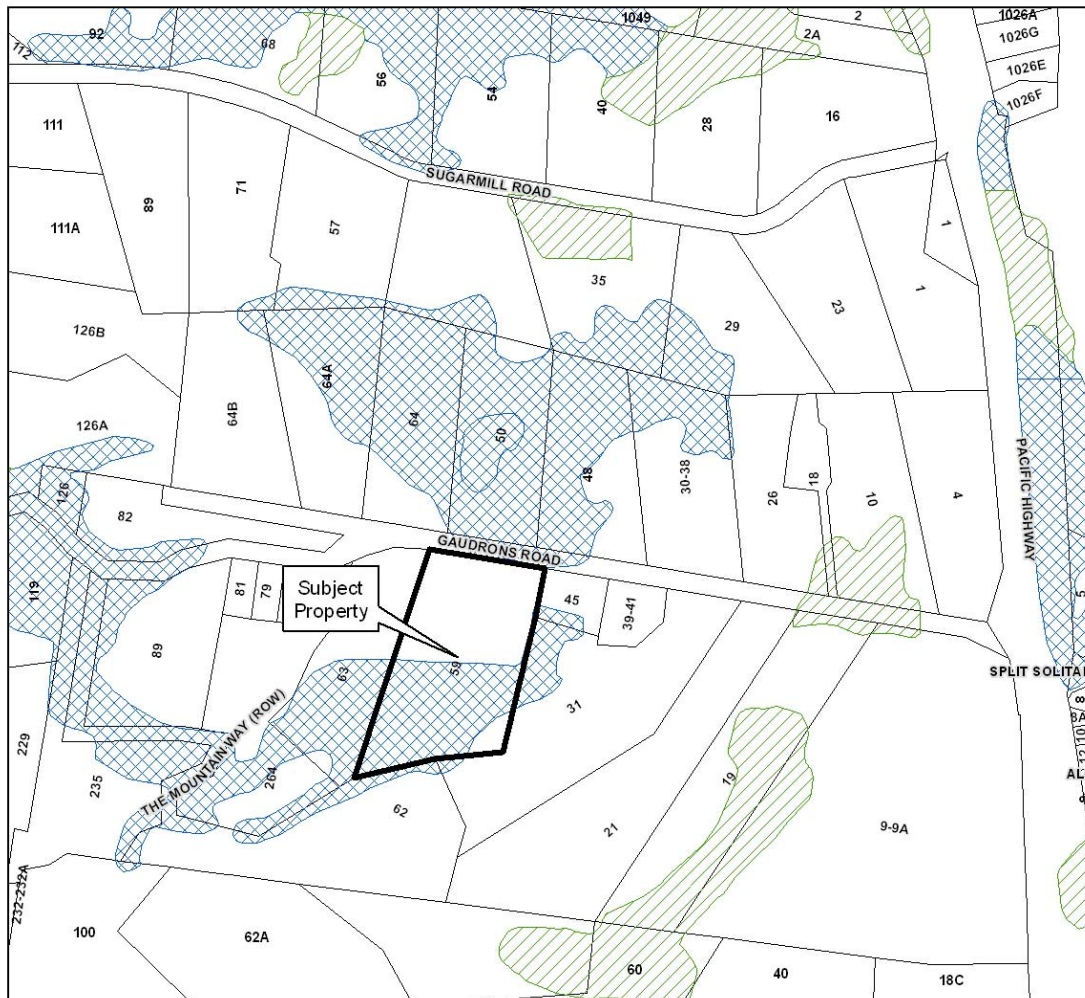
Purpose:

This is a report on Development Application 808/07 for a cattery and dog boarding kennel at 59 Gaudrons Road, Sapphire Beach. The proposed development has been the subject of significant public opposition. It is recommended that the determination of this application not take place at this stage and that Council's consideration of the application be deferred. It is also recommended that the applicant be advised of specific inconsistencies in the application.

The Development Application file will be placed in the Councillor's room for perusal prior to consideration by Council and be available at Council meeting.

Cont'd

L1 Development Application 808/07 - for Cattery & Dog Boarding Kennels, Lot 4, DP 553165, No. 59 Gaudrons Road, Sapphire Beach ... (Cont'd)



Description of Item:

The Proposal

The proposed development is to construct and operate a dog boarding kennel with 190 individual dog kennels and 26 individual cat kennels providing accommodation for a total of 200 dogs and 50 cats (there will be some dual use of the kennels, ie some kennels will be used for more than one dog or cat at times). Both short and long term accommodation will be provided.

The proposed building is 45 metres by 42 metres for the proposed dog kennels with the cat boarding area being 8 metres by 18 metres. This gives a floor area of approximately 2030 m². The main part of the building is setback 30 metres from the front property boundary. Car parking (with 18 car parking spaces), manoeuvring areas and landscaping is proposed within the setback area.

Cont'd

L1 Development Application 808/07 - for Cattery & Dog Boarding Kennels, Lot 4, DP 553165, No. 59 Gaudrons Road, Sapphire Beach ...(Cont'd)

The highest point of the building is 4.5 metres from natural ground level. The majority of the building will be contained within site excavation; up to three metres site excavation is proposed. As a result a significant portion of the building will be below natural ground level. It is proposed to "build up" the excavated soil material as landscaped mounds around the building.

The building will have an external construction of 150 mm concrete masonry blockwork with colourbond roof. Insulation, building sealing and other noise attenuation measures are proposed within the development.

The proposed development will be established in stages.

- Stage one - 50 dog kennels, four internal exercise yards, 26 cat kennels, administration area, amenities and food preparation areas.
- Stage two – Additional 45 dog kennels.
- Stage three – Additional 95 dog kennels.

The reception area of the development will be open from 8 am to 5 pm weekdays and 8 am to 10 am and 4 pm and 5 pm weekends and public holidays. Reception will not be open Christmas day, Boxing Day and Good Friday.

Wastewater treatment for the development is proposed onsite via a conventional treatment system with a subsurface irrigation area.

Solid animal waste will be removed manually and placed in storage bins after being sealed in plastic bags. It is proposed to have periodic waste collection of these bins by a Council approved waste contractor.

Water supply will be via on site water storage tanks.

The Site

The site is approximately 3.02 hectares in area. It has a road frontage (northern property boundary) of approximately 123 metres. The western, southern and eastern property boundaries are approximately 257, 160 and 148 metres respectively.

The property is approximately 480 metres west along Gaudrons Road from the intersection with the Pacific Highway.

The site slopes at grades of approximately 5 to 10 percent to the south east. A natural drainage line exists at the southern end of the site.

Approximately half of the property (the southern half) is mapped as Secondary Koala Habitat in accordance with Council's Koala Plan of Management. The proposed building will be approximately 40 metres from this stand of vegetation. The site is mapped as being bushfire prone.

Surrounding allotment sizes in the area vary considerably. Some lots are larger than the subject lot. Some lots are smaller.

The land is zoned 1A Rural Agriculture under the Local Environmental Plan 2000. The proposed development is permissible in the zone with consent.

Cont'd

L1 Development Application 808/07 - for Cattery & Dog Boarding Kennels, Lot 4, DP 553165, No. 59 Gaudrons Road, Sapphire Beach ...(Cont'd)

Sustainability Assessment:

- **Environment**

The proposed development will not result in the removal of any native vegetation. The proposed building structure is approximately 40 metres from an area of secondary Koala Habitat. Environmental impacts should be maintained at acceptable levels. See Issues section of this report.

- **Social**

Social impacts associated with amenity impacts in the area could be considerable. Amenity impacts should be contained to acceptable levels. See other relevant parts of this report.

- **Economic**

The proposed development will provide an additional service of animal accommodation to the area generally. This will provide income to the operators and provide a facility for local residents and visitors.

- **Management Plan Implications**

There are no implications for Council's adopted Management Plan.

Consultation:

This application was notified and advertised for two separate periods. For the notification period from 21 February 2007 to 20 March 2007, Council received 105 submissions, all objecting to the proposal.

Following preliminary assessment of the application, Council wrote to the applicant on 1 May 2007 and advised "*Council is of the view that the proposal cannot be supported at this stage and the following is a list of concerns with the proposal*". The list included noise, onsite waste disposal, odour, construction and other issues as points of concern.

Council received further supporting documentation for the application in late September 2007 and the proposal was notified for a second period. For the notification period from 13 December 2007 to 25 January 2008, Council received 64 submissions objecting to the proposal.

Council asked the NSW Roads and Traffic Authority for their comment on the application. They did not express any concerns with the proposal.

Council asked the NSW Rural Fire Service for their comment on the application; the site contains land mapped as bushfire prone land. They advised that the application can be approved subject to conditions.

Cont'd

L1 Development Application 808/07 - for Cattery & Dog Boarding Kennels, Lot 4, DP 553165, No. 59 Gaudrons Road, Sapphire Beach ...(Cont'd)

Statutory Requirements:

- **Section 79C Evaluation** (See Appendix A)

Section 79C of the Environmental Planning and Assessment Act 1979 specifies the matters which a consent authority must consider when determining a development application. The consideration of matters is limited in so far as they must be of relevance to the particular application being examined.

There are still matters that need to be addressed before the application may be determined. See Issues section of this report.

- **Relevant Statutory Instruments**

The following is a list of statutory instruments applicable to the application:

- Coffs Harbour City Local Environmental Plan 2000
- Koala Plan of Management
- State Environmental Planning Policy No. 55 - Remediation of Land
- State Environmental Planning Policy No. 64 - Advertising and Signage
- State Environmental Planning Policy No. 71 - Coastal Protection
- North Coast Regional Environmental Plan
- Rural Lands Development Control Plan
- Off-Street Car Parking Development Control Plan
- Access and Mobility Development Control Plan
- Notification Development Control Plan
- Waste Management Development Control Plan
- Draft Coastal and Hinterland Development Control Plan
- Signs Development Control Plan

Each of these relevant statutory instruments will be considered in detail with a determination of this application.

Issues:

- **Odour**

Council's Health Branch provided the following comment with respect to odour assessment.

"Council received a further odour assessment report dated 15 October 2007 which was prepared by Heggies Pty Ltd. Further comments are made in relation to the odour issues as raised in Council's letter of 1 May 2007. The details relate to the ventilation system which comprises a number of roof mounted exhaust fans that contribute to the odour management.

Cont'd

L1 Development Application 808/07 - for Cattery & Dog Boarding Kennels, Lot 4, DP 553165, No. 59 Gaudrons Road, Sapphire Beach ...(Cont'd)

The Heggies report in section 8.1 makes note of the 'Technical framework: Assessment and Management of Odours from Stationery Sources in NSW, 2006', and claims that it is not a regulatory tool. However the document itself in its introduction states, "This framework aims to provide an effective project plan and regulatory regime for activities which omit odour". There is also a second document titled 'Technical Notes: Assessment and Management of Odours from Stationery Sources in NSW, November 2006', that could have been referred to as part of a qualitative assessment. However some interpolation of information from other industries would have had to have been made to make it relevant to an assessment of the current proposed development. Therefore an assessment of this sort would have been subject to a degree of subjective judgement and open to debate. The qualitative odour assessment that has been carried out is considered to be a reasonable approach for the proposed development.

It should be clearly understood that these documents and the Department of Environment and Climate Change (DECC) 'Odour Performance Goals' contained in these documents, are proposed to guide decisions on odour management and are not specifically intended to achieve a no odour environment. Odours are the largest source of air pollution complaints to the DECC Environment Line. Controlling and managing odour is difficult for consent authorities, regulators and industry and the wider community because:

- Odours may cause psychological and physiological effects.*
- Sensitivity to odours is variable.*
- Odour emissions are variable.*
- The impact of odours can be subjective.*
- Odours dispersion modelling is not an exact science.*
- Odour emissions are difficult to monitor (creating difficulties in verifying performance).*

The frameworks have three key principals; the first being planning to prevent and minimise the odour, secondly using a range of strategies to manage odour and thirdly to allow for ongoing environmental improvement. The odour report deals with the first two of these principles. Considering the level of sensitivity of the proposal, as expressed in the number of objections, the third key principal is also important as it provides that the operators of all developments should adopt a risk management approach. This is to minimise the potential for odour impacts that may be experienced after an activity is operational.

The odour avoidance and mitigation measures that address the first principle are attached to the odour report in a number of detailed 'Operating Procedures' for the proposed centre, ie cleaning and disinfection procedures for the kennels and cattery, and odour control procedures. It is considered that these are reasonable procedures and are expected to be effective in mitigating odour.

A number of measures are proposed to address the second principle. Firstly, the atmosphere dispersion method proposed for dissipating odours, is considered to be most appropriate and effective means of addressing any odour issues that may prevail from the centre. The dispersive capacity of the atmosphere is great in most meteorological conditions, dilution of pollutants (including odour) in the order of 1000 to 1 is commonly achieved in the atmosphere after less than 1km of travel.

Cont'd

L1 Development Application 808/07 - for Cattery & Dog Boarding Kennels, Lot 4, DP 553165, No. 59 Gaudrons Road, Sapphire Beach ...(Cont'd)

To facilitate the aerial dispersion of odours an extractive air system is proposed using a series of roof mounted exhaust fans that are designed to provide ten air changes per hour. This system relies on the make up air being obtained through the glass louvres of the southern elevation of the raised roof areas over the dog exercise yards however, the noise consultant report indicates that these louvres would be closed during the hours when the dogs are being exercised. If this is the case then the exhaust ventilation system will be compromised.

Thirdly, the odour report also suggests a continual vegetation barrier should be established upon the eastern boundary of the subject site to act as effective barrier to any potential odour drifting towards the receptor to the east of the centre. The draft landscape plan indicates some planting on top of the effluent disposal mound to a height of 1.5m and it is considered that additional planting is required to satisfy the odour report suggestion and that this planting should have a height that will eventually exceed the roof height of the proposed centre. There should therefore be more substantial plantings along this eastern boundary to satisfy the recommendations of the odour report.

The odour report includes a Waste Management Plan which has also been reviewed and is considered satisfactory for the scale and type of development, including the odour management procedures.

The odour report also refers to the effluent disposal system in relation to odour and again provided this system operates within design parameters it is not envisaged that any odours would be generated from the effluent disposal system. A number of the Operating Procedures referred to previously detail that water will be used in a number of steps of the cleaning and disinfectant processes. Figures relating to these have been referred to the assessment of the Onsite Sewerage Management System as they will have a substantial impact on the amount of wastewater generated, and required to satisfy the cleaning and disinfectant regimes which are the primary strategies to effectively address odour issues.

In relation to the third principle, should the proposed mitigation of odours by the cleaning and disinfection Operating Procedures and the atmospheric dispersion of odours through the mechanical ventilation system be found not to be adequate, then additional measures may be required. These could include the discharge of the mechanically ventilating fans at a higher level, by providing stacks above the current proposed discharge points at the roof level, and / or by requiring the installation of odour absorption filters at the discharge points of the mechanical ventilation system. In the first instance decisions to do additional odour control should fall to the operators of the centre and therefore an 'Odour Complaint Management System' should be put in place by the operators.

The odour assessment by Heggies for the Pettina Park Pet Care Centre details a number of mitigating procedures to reduce the generation of odours from the proposed operation of the centre and also a system of mechanical ventilation which would facilitate atmospheric dispersion of any resulting residual odours from the operations.

It is considered that these measures are satisfactory provided they can be implemented in full.

Cont'd

L1 Development Application 808/07 - for Cattery & Dog Boarding Kennels, Lot 4, DP 553165, No. 59 Gaudrons Road, Sapphire Beach ...(Cont'd)

Recommendations:

1. *That clarification be sought from the proponent on the operations of the glass louvre windows on the southern elevation of the raised roof section over the dog exercise yard areas, in relation to the conflict between the odour assessment and the noise assessment reports which have conflicting views on the operations of the windows and if it is intended to approve the development the following conditions should apply:*
 - a) *That the mechanical ventilation system be maintained and operated so as to provide a minimum of at least ten air changes per hour at all times.*
 - b) *That additional vegetation plantings take place along the eastern boundary to provide a continual vegetation barrier which will eventually exceed the roof height of the proposed centre to act as an effective barrier to any potential odours.*
 - c) *That an Odour Complaint Management System be developed and implemented, having reference to the document "Technical notes: Assessment and management of odour from stationery sources in NSW dated November 2006". A copy of which to be provided to Council.*
 - d) *That the applicants be aware that should odour become an issue in the future this consent does not limit Council's ability to require additional odour management measures to be put in place."*

- **Noise**

Council's Health Branch provided the following comment with respect to noise assessment.

"The Heggies response dated 7 August 2007 to Council's issues conveyed by letter dated 1 May 2007 has been reviewed.

The ventilation system has been redesigned, is supported by Technical Details supplied by Allied Air Conditioning dated 14 June 2007 and according to the Computer Model used by the Acoustic Consultants the predicted noise levels meet the relevant noise goals as prescribed.

The development has aluminium windows located in the elevated vertical section of the walls of the exercise yards, which can be opened for ventilation to assist cooling, etc in my previous memo. On page 3 of Heggies latest report, the author refers to "the window surrounds when they are closed" (second paragraph, third point).

In Heggies Odour Assessment dated 15 October 2007 under paragraphs 7.5 and 7.7, the ventilation system consists of air intake via louvres in the raised roof section of each quadrant and exhausted via the exercise yards through door grills and then exhausted through the roof via the mechanical ventilation system, therefore the aluminium windows should be secured shut at all times.

According to the consultant's Computer Model the western receiver has been included and meets the relevant standard, despite concerns expressed previously.

Cont'd

L1 Development Application 808/07 - for Cattery & Dog Boarding Kennels, Lot 4, DP 553165, No. 59 Gaudrons Road, Sapphire Beach ...(Cont'd)

The cattery consists of open louvres on the northern and southern walls and would appear to be accessible by stray cats, possibly on heat, which would likely cause noise which does not appear to have been addressed.

- **Visual Impact**

The proposed building is significant in size but is setback 30 metres from the front property boundary. This setback will allow opportunity for landscaping to occur in the form of vegetation and earth landscaped mounds to screen the development from public areas and adjoining properties. In addition parts of the proposed building will be below ground level due to site excavation. The development is considered acceptable with respect to visual impact to the area and subject to appropriate landscaping treatment occurring around the development.

- **On-site Wastewater Treatment**

The application proposes an onsite waste treatment system with two stage treatment tanks and subsurface irrigation trenches.

The proposed system and amount of irrigation trenching is based on the estimated generation of wastewater. The figures for this provided with the development application appear to be understated especially when compared with other amenity assessment reports (such as odour report) and specific operational cleaning procedures specified in the application.

The wastewater report states an estimated generation of 1400 litres per day. An estimation by Council staff puts this figure at approximately 5600 litres per day. This estimation includes a figure for drinking water for dogs and cats (not included by the applicant, approximately 415 litres per day) and increased figures for exercise yard cleaning. Council's estimation of water use for yard cleaning is based on the cleaning procedure provided in the odour assessment.

The proposed effluent disposal and reserve areas should be designed to cater for peak wastewater demands.

There is a bore located 150 metres to the east of the proposed onsite disposal area. This may not be a significant issue given the improved treatment provided by an Aerated Waste Treatment System (as proposed in this application) but this factor has not been considered in the wastewater report.

The wastewater report has not provided detail of or considered the existing onsite sewage management system for the existing dwelling. The existing onsite sewage management system is located 10 metres east of existing house. This places the existing absorption trench where a landscaped embankment is proposed. The exact position of the existing onsite sewage management system has not been provided.

Cont'd

L1 Development Application 808/07 - for Cattery & Dog Boarding Kennels, Lot 4, DP 553165, No. 59 Gaudrons Road, Sapphire Beach ...(Cont'd)

- **Inconsistencies in Application**

As stated in the odour section and wastewater treatment section of this report, there are some conflicting statements with respect to different components of the development application. The first relates to operation of the glass louvre windows on the southern elevation of the raised roof section of the dog exercise yard. Statements about their operation made in the odour assessment are inconsistent with statements made about their operation made in the noise assessment. The application cannot be determined while operational components of the development do not concur with impact assessment reports.

There are inconsistencies relating to the claimed water usage of the development and the proposed measures to minimise odour impact from the development. This inconsistency specifically relates to the operational practice of cleaning kennels and dog exercise yards and the water use required to carry this out. As stated above the application cannot be determined while operational components of the development do not concur with impact assessment reports.

Incorrect figures about the property's dimensions have been stated in the Statement of Environmental Effects. These incorrect figures do not appear to have been carried over into other specific assessment reports of the application (such as the Noise report and the Odour assessment)

The application has not considered the location of a bore 150 metres to the east of the proposed onsite disposal area and the existing absorption trench (for the dwelling) appears to be where a landscaped embankment is proposed.

- **Traffic and Safety**

Council's City Services department and the NSW Roads and Traffic Authority have considered the development with respect to vehicular and pedestrian movement and safety and are of the view that the development is appropriate for approval.

- **Property Values**

A number of submissions state that approval of the proposal will decrease land and property values in the area and suggest that this is grounds for refusal of the application.

It is a generally accepted legal view that property values should not be considered in isolation of other potential impacts (such as amenity impacts). Council is required to consider likely impacts of a proposal and not perceived impacts which may be a component in determining a property's value.

The issue of property values should only be considered in conjunction with other issues of the proposal.

- **Impact on Native Fauna**

The development does not involve removal of native vegetation. Noise and odour considerations for the development may be acceptable subject to inconsistencies within the application being resolved. Unacceptable impact on native fauna resulting from these issues is unlikely.

Cont'd

L1 Development Application 808/07 - for Cattery & Dog Boarding Kennels, Lot 4, DP 553165, No. 59 Gaudrons Road, Sapphire Beach ...(Cont'd)

The site contains secondary Koala Habitat as detailed under Council's Koala Plan of Management. The proposal does not involve removal of any of the vegetation of this area and the area of the proposed development is some distance from this area.

The development is not contrary to any provisions of the Koala Plan of Management and adverse impact on koala populations is considered unlikely.

Issues of ground water pollution, impact of the development on the Solitary Islands Marine Park and wetlands and pollution of bore water supplies can be appropriately considered when further details about the on site wastewater treatment arrangement and inconsistencies in the application have been provided.

Impact on the Solitary Islands Marine Park and wetlands, the distance of the development site from these areas is a factor that needs to be considered and means that adverse impact is less likely.

- **Impact on Agriculture**

Council is required to consider this issue by provisions of the North Coast Regional Environmental Plan.

Limited agriculture occurs on adjoining properties and the proposed development is not of a nature that will have significant impact on agricultural pursuits. Some typical agricultural practices require a buffer distance from other uses. The requirement for a buffer distance from the proposed development will have limited impact on potential agriculture in the area due the existence of dwellings in the area, all requiring a buffer distance.

The proposed development is not land that is prime crop or pasture land in accordance with this provision.

- **Potential Soil Contamination**

The land contains areas, which were subject to prior banana cultivation.

In accordance with Council's Agricultural Chemical Residues Policy it is appropriate to consider this area as potentially contaminated land in accordance with the provisions of State Environmental Planning Policy No. 55 - Remediation of Land.

A preliminary investigation of the land, carried out in accordance with the contaminated land planning guidelines, was submitted with the application and this has been considered by Council.

The investigation did not reveal any unacceptable levels of agricultural chemical residues or any other forms of contamination. With respect to potential soil contamination, the land is considered suitable for the proposed development.

Cont'd

L1 Development Application 808/07 - for Cattery & Dog Boarding Kennels, Lot 4, DP 553165, No. 59 Gaudrons Road, Sapphire Beach ...(Cont'd)

- **Compliance with Other Acts and Standards**

A number of state and commonwealth Acts and standards have been referred to in submissions on the application with statements that the proposal “does not comply”.

Assessment of a development application is limited to provisions of the Environmental Planning and Assessment Act and subordinate legislation under the act and environmental planning instruments (eg local environmental plans, regional environmental plans, state environmental planning policies) given power under the act. Other acts and standards should not be considered as part of a determination unless there is some founding to do so under the Environmental Planning and Assessment Act. A determination based on compliance or otherwise with other legislation could be without legal standing.

- **Information Supplied and Submitted with the Development Application**

A number of submissions have made comment on the adequacy or lack of information submitted with the application. The Environmental Planning and Assessment Act and Regulation stipulate the information that should be submitted with a development application. The act is silent about the adequacy or veracity of the submitted information. Council needs to be satisfied that all submitted information, above and beyond specific details of the proposal, could be appropriately considered as a “statement of environmental effects”. Obvious omissions need to be addressed. Contradictions between details of the proposal and statements of the developments impact should not be apparent.

- **Precedent**

A number of submissions made on the application have cited examples of Land and Environment Court refusals of boarding kennel proposals as a precedent for Council to refuse this application. Precedent can only be considered where the circumstances of the proposal can be demonstrated to be similar and while there are examples of boarding kennel proposals being refused in the Land and Environment Court there are also examples of developments that have been approved.

- **Prolonged Staged Construction**

The development is proposed to be constructed in stages. Council needs to be satisfied that the development can operate under each individual stage.

It appears that each stage of the development can operate independently of the other stages. This matter can be reinforced by conditions of development consent.

- **Opposition by the Community and Alternative Sites**

Whether or not the proposed development is suitable for the subject site is dependent on the likely impacts of the development and whether they are acceptable.

While there are other sites available for developments of this kind, where the potential adverse impacts from the development are less, Council must still consider whether the impacts at the subject site are acceptable or can be mitigated or modified to be acceptable.

Cont'd

L1 Development Application 808/07 - for Cattery & Dog Boarding Kennels, Lot 4, DP 553165, No. 59 Gaudrons Road, Sapphire Beach ...(Cont'd)

Consideration of this issue should be made with consideration of all other matters addressed in this report.

- **Council Resources in the Event that the Application is Approved**

A submission made on the application has stated that, in the event that the application is approved, Council (and other relevant government departments) would not have sufficient resources to investigate future resident concerns about the development or to ensure compliance with conditions of approval.

There is opportunity in conditions of development consent to impose a requirement for monitoring of development by the operator and for annual reports to be provided, demonstrating compliance (or otherwise) with conditions of development approval. Such conditions can limit some of the work required by Council to ensure compliance with conditions. Appointment of a specific contact and liaison person (with provision of their contact details) is another matter that could be imposed by a condition of development consent and could direct resident concerns directly to the operator. Conditions of this kind have been imposed on some of the quarry operations in the Coffs Harbour area and have proven to be effective.

- **Character of Area**

The area of the proposed development is mixed in its character. The area contains rural allotments which vary considerably in area.

There are a number of dwellings in the area all with significant separation distances between them. The amount of agricultural practices that occur in the area is limited. There are significant stands of vegetation in the area.

- **Update of Rural Residential Strategy**

Council received the following feedback from Council's Land Use Planning section.

“Coffs Harbour City Council resolved, as a component of its Standard LEP Template process, to update its Rural Residential Strategy to guide rural residential development for the local government area.

Coffs Harbour City Council's existing Rural Residential Strategy was produced over 8 years ago in 1999. It does not include the newly amalgamated lands of Red Rock, Corindi Beach and Corindi Plateau. Much of the advice and information included in the 1999 Strategy is outdated, with many of the listed areas now already rezoned. The purpose of the current project is to review the existing strategy to establish a citywide approach to rural residential development and determine the future pattern of rural residential development in the Coffs Harbour local government area.

Council's “Our Living City Settlement Strategy” (OLCSS) details the short and long term outlook for development in the Coffs Harbour local government area. This document will primarily frame the recommendations of the revised Rural Residential Strategy.

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L1 Development Application 808/07 - for Cattery & Dog Boarding Kennels, Lot 4, DP 553165, No. 59 Gaudrons Road, Sapphire Beach ...(Cont'd)

As an outcome of feedback received to the OLCSS, and from the Department of Planning in relation to Council's Rural Settlement Policy (which was completed in May 2007), Council has identified five additional possible locations for rural residential development. These areas are to be included for assessment in the strategy review. These locations include:

- Corindi Beach,*
- Nana Glen,*
- Coramba,*
- Karangi, and*
- Moonee.*

The Gaudrons Road area is included in the Moonee investigation area.

The outcome of the strategy review may be to rezone candidate lands for Rural Residential Purposes.

Lands to the South of the Moonee area were zoned under the Korora Rural Residential process. This allows for the creation of 1 and 2 hectare Rural Residential subdivisions.

Should the strategy review confirm the need to rezone the Moonee candidate area, and then the character of the area will be different from that which exists today. Development assessment of proposals, within the area, needs to consider the area's potential future character."

This raises some issues concerning the development of the area. The review of the Rural Residential Development Strategy is expected to be completed by external planning consultants within six months.

Summary:

This report has highlighted and addressed some of the issues of this development proposal that are relevant at this point in time. Not all issues relevant to a determination have been addressed.

There are some inconsistencies in the development proposal, especially with respect to amenity assessment reports and boarding kennel operational procedures. The application cannot be determined while operational components of the development do not concur with assessment of the development's impact.

It is appropriate that Council consider the likely future use and character of the area and consideration of the area as a future Rural Living zone under the review of the Rural Residential Strategy warrants deferral of Council's consideration of the application at this stage.

It is recommended that this development application not be determined at this stage.

Cont'd

L1 Development Application 808/07 - for Cattery & Dog Boarding Kennels, Lot 4, DP 553165, No. 59 Gaudrons Road, Sapphire Beach ...(Cont'd)

Recommendation:

- 1. That Council request the applicant to defer consideration of Development Application 808/07 until the Rural Residential Strategy is completed.**
- 2. That Council advise the applicant that Development Application 808/07 contains inconsistencies and insufficient detail and be requested to provide further information with respect to:**
 - On-site wastewater treatment;**
 - Odour treatment and assessment;**
 - Noise assessment.**

**Mark Salter
Director
Land Use, Health and Development**

Attachments:

APPENDIX A

**Section 79C Evaluation
Development Application 1213/06**

- a. the provisions of,
- i. any environmental planning instrument, and

- ***State Environmental Planning Policy No. 55 - Remediation of Land***

This policy introduces controls for the remediation of contaminated land and states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy ensures land is investigated if contamination is suspected. The policy should be considered, in conjunction with the Environment Protection Authority's, Managing Land Contamination: Planning Guidelines.

The land contains areas, which were subject to prior banana cultivation.

In accordance with Council's Agricultural Chemical Residues Policy it is appropriate to consider this area as potentially contaminated land in accordance with the provisions of this state policy.

A preliminary investigation of the land, carried out in accordance with the contaminated land planning guidelines, was submitted with the application and this has been considered by Council.

The investigation did not reveal any unacceptable levels of agricultural chemical residues or any other forms of contamination. With respect to the matters relevant to this state policy the land is considered suitable for the proposed development.

- ***State Environmental Planning Policy No. 71 - Coastal Protection***

This policy was implemented to ensure that development in the NSW coastal zone is appropriate and suitably located, to ensure that there is a consistent and strategic approach to coastal planning and management and to ensure there is a clear development assessment framework for the coastal zone.

The land is not within the NSW coastal zone. This policy is not of relevance to this development.

- ***State Environmental Planning Policy No. 64 -***

The application proposes one sign 1.8 metres by 0.6 metres.

This proposal is not contrary to the provisions of this policy.

- ***North Coast Regional Environmental Plan 1988***

Most of the provisions of this policy provide local government with state and regional policy guidelines for the preparation of local environmental plans. Some of the provisions provide guidelines for certain types of development. The emphasis is on progress coupled with careful management.

Clause 12 *Development control--impact of development on agricultural activities*

The council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land.

Limited agriculture occurs on adjoining properties. The proposed development is not of a nature that will have significant impact on agricultural pursuits.

Some typical agricultural practices require a buffer distance from other uses. The requirement for a buffer distance from the proposed development will have limited impact on potential agriculture in the area due the existence of dwellings in the area, all requiring a buffer distance.

The proposed development is not land that is prime crop or pasture land in accordance with this provision.

Clause 15 *Development control--wetlands or fishery habitats*

The council shall not consent to an application to carry out development for any purpose within, adjoining or upstream of a river or stream, coastal or inland wetland or fishery habitat area or within the drainage catchment of a river or stream, coastal or inland wetland or fishery habitat area unless it has considered the following matters:

With respect to matters relevant to the location of the site in relation to water courses, coastal wetlands and fishery habitats it is appropriate for Council to be satisfied that the development will maintain the quality of water flow from the site and will not result in pollution.

The site is approximately two kilometres “upstream” of a designated wetland. There is no direct connection to the wetland via a water course. The land has a natural drainage line over the southern part of the property.

While the site is some distance from the wetland area, it is appropriate to consider the proposed on-site wastewater system with respect to off-site pollution impacts.

It is appropriate to obtain further information about the proposed development with respect to wastewater disposal. It is not appropriate to approve the development at this stage.

- ***Coffs Harbour City Local Environmental Plan (LEP) 2000***

- *Zoning*

- The subject site is zoned Rural 1A Agriculture under Coffs Harbour City Local Environmental Plan 2000. The proposed development accords with the definition of animal establishment and is permissible in the zone with consent.

- *Clause 12 Koala Habitat*

- This clause prevents Council from approving any development unless it is in accordance with a Koala Plan of Management.

- Council’s adopted Koala Plan of Management is relevant to consideration of this clause.

The site contains land which is mapped as Secondary Koala Habitat in accordance with this plan.

The proposed development is not within the area mapped as Koala Habitat and will not remove any native vegetation.

- *Clause 13 Landform Modification*

The proposed development will not have the effect of significantly adversely affecting the natural environment, through either the filling proposed by the development or the excavation proposed by the development.

Appropriate conditions of approval can be applied, requiring implementation of typical sediment and erosion control provisions, in the event that the application is approved.

- *Clause 14 Services*

The application specifies details of an on-site sewerage management system. Further details of the system are required before Council is in a position to determine the application.

Water supply is proposed through on site storage tanks.

- *Clause 21 Heritage - Archaeological areas*

The Coffs Harbour and District Local Aboriginal Land Council received notification of this development proposal. No submission from this department was received. The site is not one of any known archaeological item.

- *Clause 23. Environmental Hazards - Potential acid sulfate soils*

The area of proposed development is mapped as class 5 Potential Acid Sulfate Soils.

The likelihood that the proposed development will encounter acid sulfate soils during construction is unlikely and any adverse impact as a result of acid sulfate issues is extremely unlikely.

ii. any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and

All current draft environmental planning instruments have been considered.

There are no draft environmental planning instruments of relevance to the subject site or development.

iii. any Development Control Plan (DCP)

• Rural Lands Development Control Plan

The only part of this plan that has specific reference to the proposed development is the section that relates to setbacks and buffers.

The plan specifies a buffer and separation distance of 500 meters between a dwelling and another activity that may produce odour. The plan further states that “a reduced setback is permitted where the limiting factor can be reduced or eliminated”.

The proposal may be acceptable with respect to odour. Further detail needs to be provided.

There are no other sections of this plan that require consideration.

- **Off-Street Car Parking Development Control Plan**

Council’s car parking DCP does not specify a rate for developments of this kind. In these circumstances a car parking study is required of a similar type of development in a similar location.

The applicant has chosen to make car parking comparisons with the operators existing operation in Moonee Beach.

Council’s City Services Department is satisfied that sufficient off street car parking spaces are proposed for the development.

- **Access and Mobility Development Control Plan**

This plan adopts the Building Code of Australia provisions with respect to access and facilities for disabled persons.

A preliminary assessment of the proposal indicates that it can comply with Building Code of Australia provisions and that car parking as required can also be provided. Compliance with the provisions of this plan can be reinforced by imposition of a relevant condition of development consent.

- **Notification Development Control Plan**

The development application was advertised and notified in accordance with the provisions of this plan.

No further matters to consider.

- **Waste Management Development Control Plan**

This plan contains recommended measures for waste management on sites.

The proposed development is different in nature from any development anticipated by this plan. Council’s Health Department has considered the waste management in conjunction with the provisions of this plan. The development is considered acceptable in this regard.

- **Draft Coastal and Hinterland Development Control Plan**

This development control plan is a draft. In this context the weight that should be given to this document should be less than that given to an adopted plan.

There are no provisions that relate specifically to development of this kind. The plan refers to buffer distances between land uses and specifies some distances from conflict elements of chemical spray drift, intermittent odour, and intermittent noise.

These details have been sourced from the Queensland Department of Primary Industries. These buffer distances can be considered with respect to merit arguments about the development on noise and odour.

- **Signs Development Control Plan**

The application proposes one sign 1.5 metres by 0.8 metres.

This proposal is in accordance with the general provisions of this plan and the provisions that relate to rural settings.

iv. the regulations (to the extent that may prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,

There are no matters required to be considered under this section.

b. the likely impacts of that development, including environmental impacts, on both the natural and built environments, and social and economic impacts in the locality,

Council is satisfied that the proposed development is unlikely to result in unacceptable impacts on the environment. Consideration of those matters under Section 5A of the Environmental Planning and Assessment Act has been made.

The development does not involve removal of native vegetation. Noise and odour considerations for the development may be acceptable subject to inconsistencies within the application being resolved. Unacceptable impact on native fauna resulting from these issues is unlikely.

The site contains Secondary Koala Habitat in accordance with Council's Koala Plan of Management. The proposal does not involve removal of any of the vegetation of this area and the location of proposed development is some distance from this area.

The development is not contrary to the provisions of the Koala Plan of Management.

Issues of ground water pollution, impact of the development on the Solitary Islands Marine Park and wetlands and pollution of bore water supplies can be appropriately considered when further details about the on site wastewater treatment arrangement and inconsistencies in the application have been provided.

With respect to impact on the Solitary Islands Marine Park and wetlands, this must be considered in light of the development's distance from these areas.

Measures can be incorporated into the development and imposed as conditions of development consent to achieve acceptable visual impact.

Council's City Services Department and the NSW Roads and Traffic Authority have considered the development with respect to vehicular and pedestrian movement and safety and are of the view that the development is appropriate for approval.

The impact of the proposed development on existing and future agriculture has been considered. Limited agriculture occurs on adjoining properties and the proposed development is not of a nature that will have significant impact on agricultural pursuits. Some typical agricultural practices require a buffer distance from other uses. The requirement for a buffer distance from the proposed development will have limited impact on potential agriculture in the area due to the existence of dwellings in the area, all requiring a buffer distance. The proposed development is not land that is prime crop or pasture land.

Soil erosion and adverse impacts from stormwater runoff can be mitigated with imposition of appropriate conditions of development consent.

It is a generally accepted legal view that property values should not be considered in isolation of other potential impacts (such as amenity impacts). Council is required to consider likely impacts as opposed to perceived impacts which may be a component in determining a property's value. Evidence of property value movement and reasons for is often debatable.

c. the suitability of the site for the development,

Whether or not the proposed development is suitable for the subject site is largely a component of whether or not other components of the development and its likely impacts are acceptable.

While there are other sites available for developments of this kind, where the potential adverse impacts from the development are less, Council must still consider whether the impacts at the subject site are acceptable or can be mitigated or modified to be acceptable.

Consideration of this issue should be made with consideration of all other matters addressed in this report.

d. any submissions made in accordance with this Act or the regulations,

Numerous submissions have been made on the proposal following notification. A summary of the issues raised is provided as appendix A to this item. Numerous and varied issues have been raised. Some are relevant issues and some should not be considered as part of a determination of the development proposal.

Assessment of a development application is limited to provisions of the Environmental Planning and Assessment Act and subordinate legislation under the Act and environmental planning instruments (eg local environmental plans, regional environmental plans, state environmental planning policies) given power under the Act. Other Acts and standards should not be considered as part of a determination unless there is some founding to do so under the Environmental Planning and Assessment Act.

All public submissions have been considered in their context.

As well as public submission Council has also taken into consideration input from the NSW Roads and Traffic Authority and the NSW Rural Fire Service.

e. the public interest,

The proposed development is considered to be within the public interest.

Summary of Issues Raised in Submissions

1. The proposal will result in offensive odour.
2. The proposal will result in excessive and offensive noise.
3. The proposal will result in adverse visual impact.
4. The proposal will pollute ground water.
5. The proposal will pollute bore water supplies
6. The proposal has insufficient on-site wastewater disposal.
7. The proposal is incompatible with existing land uses.
8. The proposal will have an adverse impact on traffic and pedestrian safety.
9. The proposal has insufficient off street car parking.
10. Approval of the proposal will decrease land and property values.
11. The proposal will result in adverse social and economic impact.
12. The proposal will attract vermin and insects.
13. The proposal will have an adverse impact on native fauna including koalas.
14. The proposal will result in loss of prime agricultural land.
15. The site has potential soil contamination.
16. There is insufficient separation distance between dwellings and the proposed development.
17. The proposal will result in soil erosion.
18. There is no provision for storm water run off from the car park area.
19. There will be impacts from prolonged staged construction.
20. There is existing precedent of refusal in Land and Environment Court appeals.
21. Approval of the development will set an undesirable precedent.
22. There is opposition by the community.
23. The proposal is contrary to Council's visions for the area.
24. There are alternative sites.
25. Chemicals used within the development will result in additional impact on the environment.
26. It is inappropriate to consider the development in the light of possible rezoning of the land to a Rural Living zone.
27. The proposal will impact on the Solitary Islands Marine Park.
28. There will be exposure of boarding animals to agricultural sprays from banana growing in the area.
29. New bores will not be able to be formed due to pollution provided by the development.
30. The proposal will adversely impact on clientele of bed and breakfast operations.
31. The proposal will result in health risks to residents of the area.
32. The proposal does not meet regional state and national standards for similar developments.
33. There is lack of Council resources and appropriate legislation to enforce conditions of approval.
34. There is lack of Council resources to deal with ongoing community concerns with the development if approved.
35. The proposal does not comply with objectives of the Local Environmental Plan, or the objectives of the 1A Rural (Agriculture) zone.
36. The proposal does not comply with the Rural Lands Development Control Plan, the Coastal and Hinterland Development Control Plan and the Signs Development Control Plan.
37. The proposal does not meet occupational health and safety standards.
38. The proposal is in breach of the Protection of the Environment Act.
39. The proposal is in breach of the Water Management Act 2000.
40. The proposal is in breach of the Rural Fires Act 1997.
41. Animal welfare concerns.
42. The application does not address Development Control Plans, signs, aboriginal values, traffic and safety.
43. The Statement of Environmental Effects is misleading and inadequate.
44. The application fails to properly describe the development.
45. The application does not contain a traffic assessment.

46. The application seeks approval for works on the road reserve.
47. The applicant did not consult with residents in an appropriate manner.
48. The development application plans contain figures that are not correct.
49. The submitted noise report does not satisfactorily address sections of the Industrial Noise Policy.
50. The application specifies unrealistic water and wastewater figures.
51. The wastewater assessment submitted with the application considers daily average figures not peak volumes.
52. The proposal has insufficient water supply.
53. The application raises questions about staffing numbers.
54. There are incorrect measurements provided in the application.
55. The proposed development should include a generator (recommended by DPI and RSPCA guidelines).
56. Request that Council prepare a Development Control Plan for Cat Breeding and Dog Kennels.
57. Request that Council rezone the land to 2A Residential.