

Subject: PES - Request for Preparation of Planning Proposal - Palms Oasis P/L
Index: SP-LEP-13 & SP-PP-05
Author: Manager Strategic Planning - Roger Busby
Ordinary Meeting: 14 August 2012

SUMMARY OF REPORT:

At the Strategic Committee meeting of 8 May 2012, Council adopted a Planning Proposal for the rezoning of the Pacific Palms study area. Council also resolved to send the Planning Proposal to the Minister to be made when a Planning Agreement (to ensure the transfer of some land to National Park) had been signed by the respective parties.

One of the main landowners, Palms Oasis Pty Ltd, made a submission to the exhibited Planning Proposal requesting that parts of their land be rezoned to residential. After considering the submission, Council resolved to rezone all of their land to 7(a1) Environmental Protection.

A request has now been received from consultants acting for Palms Oasis Pty Ltd for Council to prepare a Planning Proposal so as to rezone 1 – 1.5 ha of the land for development. Palms Oasis Pty Ltd has also advised that they would be willing to enter into a Planning Agreement for the dedication of the balance of the land (other than an area on the western side of The Lakes Way where a dwelling was approved in 2006), that will be zoned 7(a1) Environmental Protection, to the Office of Environment and Heritage as National Park.

This report addresses the request for preparation of a Planning Proposal.

SUMMARY OF RECOMMENDATION:

- A. That in relation to Lot 83 DP 753168 and Lot 427 DP 861736, Boomerang Dr, owned by Palms Oasis Pty Ltd that Council:
1. Resolve, under s55 of the Environmental Planning and Assessment Act, 1979, to prepare a Planning Proposal, for the rezoning of the land to permit extensions to the Palms Oasis Caravan Park and the balance of the land to 7(a1) Environmental Protection, as shown in Figure 2 of the Coastplan submission contained in Attachment B.
 2. The Planning Proposal, once prepared, be submitted to the Department of Planning and Infrastructure for a gateway determination.
- B. That Palms Oasis Pty Ltd be advised:
1. That Council accepts the offer from them to enter into a Planning Agreement for the dedication of the balance of the land, excluding the site of the approved dwelling on the western side of The Lakes Way on Lot 427 DP 861736, to the Office of Environment and Heritage as National Park.
 2. That the cost of preparation of the Planning Agreement is to be fully funded by them.
 3. The proposed Planning Agreement is to be exhibited concurrently with the Planning Proposal.
 4. In the event that Council supports the Planning Proposal after it has been exhibited, that the Planning Proposal will be submitted to the Minister to be made only after the Planning Agreement has been executed by all parties.

5. The area for retention by Palms Oasis around the approved dwelling site on Lot 427 DP 861736, The Lakes Way, will be based on the following main principles:
- Minimising the length of boundary that will interface with the land to be dedicated to National Park.
 - Ensuring that all Bushfire Asset Protection Zones and service corridors for the dwelling are contained in the dwelling lot.
 - Ensuring a buffer zone to the SEPP 14 Wetlands is contained in the land to be dedicated to National Park.
 - Inclusion of the access route to the dwelling in the dwelling lot.

FINANCIAL/RESOURCE IMPLICATIONS:

The preparation of a Planning Proposal will involve additional unprogrammed work on the Strategic Planning Section's work program. This work will have to be accommodated as opportunity arises.

POLICY IMPLICATIONS:

The preparation of a Planning Proposal, which results in the rezoning of the land, will establish Council's final policy for development and conservation of the land.

LEGAL IMPLICATIONS:

It is always possible for a rezoning to be challenged in the Land and Environment Court.

LIST OF ANNEXURES:

A: Location of Approved Dwelling on Lot 427 DP 861736, The Lakes Way.

LIST OF ATTACHMENTS:

- A: Draft Local Environmental Plan for Pacific Palms Study Area adopted by Council.
B: Submission from Coastplan consultants, on behalf of Mr Norm Lyons (Palms Oasis Pty Ltd), requesting Council to prepare a Planning Proposal.

Due to their large size, Attachments A and B have been circulated in hard copy to Councillors and Senior Staff only as a paper conservation measure. However, these Attachments are publicly available on Council's Website, copies are available at Council offices and copies are available on request.

REPORT:

Background

Over the period 21 December 2011 to 17 February 2012, Council exhibited a Planning Proposal for the rezoning of the land referred to as the Pacific Palms study area. Submissions to the exhibited Planning Proposal were then considered by Council at the Strategic Committee meeting of 8 May 2012.

At the meeting of 8 May 2012, Council resolved to adopt the draft Local Environmental Plan (LEP) that was part of the Planning Proposal. Council also resolved to only forward the draft LEP to the Minister to be made once the Planning Agreements for a development / ecological offset arrangement with the main landowners had been signed by all parties. All proposed Planning

Agreements have been forwarded to the landowners for signing and at this stage not all of them have been returned. The draft LEP adopted by Council is contained in Attachment A.

History of Ownership and Agreements Relating to land Owned by Palms Oasis Pty Ltd

The previous owner of this land, Mr Newbold, had negotiations with Council and the Office of Environment and Heritage to rezone part of the land for development and to dedicate the remainder to National Parks as an ecological offset (in accordance with the recommendation from the SMEC Negotiated Dispute Resolution session).

Mr Newbold ultimately decided not to enter into this agreement and sold the land to Mr Norman Lyons of Palms Oasis Pty Ltd. At that point in time Council resolved to rezone the entire holding owned by Mr Newbold to 7(a1) Environmental Protection if a satisfactory offset, by dedication of land to National Park, was not provided.

Mr Lyons bought the land from Mr Newbold with the knowledge that Council proposed to rezone the entire holding to 7(a1).

Following purchase of the land, Mr Lyons had discussions with Council and OEH staff relating to development and an offset arrangement but Mr Lyons ultimately decided to withdraw from the development/conservation offset arrangement. Consequently the exhibited Planning Proposal showed the entire holding as being zoned 7(a1).

Submission to the exhibited draft LEP on behalf of Palms Oasis Pty Ltd (Mr Lyons)

Coastplan consultants made two submissions to the exhibited draft LEP on behalf of Palms Oasis Pty Ltd.

The first submission (16 February 2012) requested an area for development larger than that recommended by SMEC in their report on the Dispute Resolution Process that they facilitated in December 2007. The enlarged area adjoined the existing Caravan Park. Coastplan requested that it be zoned for Long term Caravan Park Sites and Residential. This area extended in an easterly direction and was about 1.5ha larger than the SMEC recommended area. Coastplan also indicated that the owner (Mr Lyons) was prepared to enter into an agreement for an offset arrangement as previously discussed.

In response to this submission a site inspection was undertaken by Council Officers, OEH Officer, Coastplan Consultant and the land owner, Mr Lyons. Discussions with Mr Lyons during the site inspection related to a development area greater than that outlined in the submission from Coastplan. In addition to this, Mr Lyons did not confirm his willingness to enter into an agreement to dedicate the environmental offset land to OEH for protection into perpetuity.

Given the disparity between the submission from Coastplan and the discussions with Mr Lyons at the site inspection, Council wrote to Coastplan seeking clarification of the proposed development and confirmation that Mr Lyons agreed to enter into a Planning Agreement to dedicate the ecological offset land to OEH.

A meeting was held with Council Officers, Coastplan Consulting and Mr Lyons on 21 March 2012. During this meeting Mr Lyons submitted a written response to Council's request for clarification. It described Mr Lyons' frustration at the rezoning process and his reluctance to accept the development footprint recommended by the independent SMEC report and to dedicate the remainder of the land to National Parks as an ecological offset. In addition, he believed Council was leaving him no options if he did not want to accept the proposed development and offset arrangement given that his land is proposed to be zoned 7(a1) Environmental Protection.

Council Officers conveyed to Mr Lyons that the offset arrangement was entirely voluntary and that he was under no obligation to enter into any negotiations or agreements concerning his land. It was also confirmed that Council would consider any development / rezoning proposal that Mr

Lyons or Coastplan wished to submit but that this would still have to be assessed according to the ecological constraints that were identified in the previous studies.

Following this meeting Council received, on 29 March 2012, an amended submission from Coastplan on behalf of Mr Lyons. The footprint identified in this submission was much larger than the footprint requested in the submission of 16 February. It included a further extension of the SMEC footprint in an easterly direction as well as an additional footprint adjoining The Lakes Way in the north western corner of the land. In total it is more than twice the size of the SMEC recommended footprint. The submission confirmed that if Council was willing to accept this proposal the landowner would be willing to dedicate the remainder of the land as an ecological offset.

After considering the second submission Council did not support the enlarged area requested by Coastplan on behalf of Mr Lyons and resolved to rezone the entire holding to 7(a1) Environmental Protection.

REQUEST FOR COUNCIL TO PREPARE A PLANNING PROPOSAL FOR LOT 83 DP 753168 AND LOT 427 DP 861736, BOOMERANG DR (Palms Oasis Pty Ltd)

Coastplan consulting has now made a submission to Council requesting that the area identified in their submission of 16 February be rezoned to allow an extension of the adjoining Palms Oasis Caravan Park. This area extends the SMEC recommended area by about 1 – 1.5ha in an easterly direction. The submission also indicates Mr Lyon's willingness to enter into a Planning Agreement for the dedication of the balance of the land, excluding the site of an approved dwelling on the western side of The Lakes Way, to the Office of Environment and Heritage as National Park. The area excluded for the dwelling should be the minimum necessary to support a dwelling footprint, APZ, access and service corridors and should probably not need to exceed 0.5ha.

The remaining area for dedication would be approximately 59ha.

The Coastplan submission is contained in Attachment B.

Assessment of Request for Council to Prepare Planning Proposal

There are two components to the request from Coastplan consulting; the extension of the development in an easterly direction to include a further 1 – 1.5 ha and the retention of the approved dwelling site on the western side of The Lakes Way on Lot 427.

The location of the approved dwelling site is shown in Annexure A. In the arrangements with the previous owner, this dwelling site was to be abandoned and the area dedicated to National Park. To compensate, the development area adjoining the northern boundary of the caravan park was to be expanded.

One of the main concerns of Palms Oasis Pty Ltd is their belief that the ecological offset required to achieve a reasonable development/conservation outcome is disproportionate when compared to the other main landowners at Pacific Palms.

The ecological offset for the land (Lots 83 and 427) is larger than that required for other landowners because of the high environmental values that were identified on the land in all the studies that were done for Pacific Palms. As a consequence, a larger area needs to be guaranteed for protection to offset the impacts of habitat loss in the area to be rezoned and developed.

The studies identified the following as the main constraints on the land requested for rezoning for development:

- High biodiversity value

- Endangered Ecological Community
- Primary Koala habitat
- Threatened species
- Fauna movement corridors

Notwithstanding the above constraints Council, based on the SMEC recommendations, was satisfied that a balanced development and ecological outcome would be achieved if the development area of about 2ha was offset by dedication of the balance of the land to National Park. This is because most of the primary Koala habitat would be protected and the main fauna movement corridors retained. Transfer of the remainder of the holding to National Park would also ensure the ecological integrity of much of the land would be maintained and ultimately enhanced. This would avoid the gradual environmental degradation that would inevitably occur over the longer term if the land stayed in private ownership.

Comments from Council's Senior Ecologist

Generally, the subject land possesses a very high level of ecological constraint, which includes the known presence of endangered ecological communities, threatened species, regionally significant native vegetation communities and primary Koala habitat. The SMEC recommendation arising from the Dispute Resolution Process considered these ecological features and values. It determined independently the constraints and opportunities to further development of the land and identified the necessary conservation/ development balance, in their opinion, that was reasonable and appropriate.

The request for a planning proposal put forward by Coastplan Consulting on behalf of Mr Norm Lyons extends the SMEC footprint in two key areas:

- *An eastward extension of a possible development envelope on part of Lot 83 that lies to the north of the existing Palms Oasis Caravan Park; and*
- *Retention of the area around the approved dwelling on Lot 427 to the west of The Lakes Way.*

The Coastplan Consulting proposal maintains the SMEC requirement that the residue of the land outside the development envelopes be zoned for environmental protection and dedicated to the NSW Office of Environment and Heritage for gazettal as a National Park. It is noted that public conservation management within the National Parks system is the highest and best form of conservation status and designation.

Thus, the ecological question to be resolved relates to whether the proposed development envelope extensions put forward by Coastplan Consulting are reasonable and appropriate and that subsequent development within those envelopes would likely be lawfully permissible.

I have attended the subject land on a number of occasions, which included a joint site meeting on the 6 March 2012, and which was attended by the land owner, OEH Officer, Coastplan Consulting and Council Officers.

The approved dwelling footprint on Lot 427, to the west of The Lakes Way, has been partially formed in accordance with the conditional requirements of DA946/ 2005.

The 1 to 1.5 hectare eastward extension of the SMEC development envelope on Lot 83 extends this development footprint from the swamp sclerophyll forest community type onto an adjacent ridge (low to mid-slope position). The vegetation comprises a Grey Gum/ Spotted Gum/ Blackbutt dry open forest with Tallowwood and Forest Oak well-represented. The vegetation includes some mature and over-mature and hollow-bearing trees. The understorey within this vegetation had been subject to some degree of recent physical disturbance.

I am content that it would be reasonable and appropriate to extend the SMEC development footprint in the manner described in the Coastplan Consulting submission as well as to retain the area of the existing dwelling consent on Lot 427 (together with its surrounding APZ and inclusive of its accessway and service corridors. I do not think that these extensions represent or would cause a significant or unreasonable ecological impact beyond that which SMEC had identified. While there are cumulative worsening associated with the loss of habitat and native vegetation, it is unlikely that such worsening of loss would cause a catastrophic loss of threatened biodiversity or an unreasonable impact on environmental services provisions and native vegetation.

However, this critically depends on the timely delivery of the conservation of the nominated residue to public conservation via the NSW reserves system. It is proactive and positive that as a consequence of this outcome that some 59 hectares of very high conservation value lands in the Pacific Palms area, including EEC, wetland, threatened species habitat and significant vegetation would be transferred to the public conservation estate. It is this balanced outcome that satisfies me that the proposal put forward by Coastplan Consulting in their submission of the 9 July 2012, can be supported.

While the extended development footprints cause a lengthening of the private development interface with the conservation land, I am content that this would not be associated with unreasonable management implications or impacts. The conservation land can be appropriately physically separated and defined from the development land (by fencing and signage) and edge-effects can be managed. All APZ, services and access would be confined to the development envelope areas.

Further, the extended development envelope north of the Palms Oasis Caravan Park now occupies land on the northward extension of a relatively linear and narrow line of trees located near the western boundary of the Horne property (Lot 2 DP862876) and which has been previously identified as a wildlife corridor and visual screen between the future residential area on Mr Horne's land and the Palms Oasis Caravan Park. I am satisfied that there could be some selective retention of trees within the extended development envelope area that would serve to maintain some wildlife connectivity/ movement potential in conjunction with selective tree retention on the Horne property. I do not believe that this issue constrains the outcomes sought in the Coastplan Consulting submission.

As such, I accept the submission of Coastplan Consulting dated 9 July 2012 and believe that it represents an appropriate and reasonable outcome for balancing development and conservation. It extends the SMEC outcomes in a manner that I do not believe is unreasonable. Importantly, it delivers approximately 59 hectares of very high conservation land to the public conservation estate, which is a positive and proactive conservation management outcome.

One issue that will have to be resolved if Council supports the proposal by Coastplan is the amount of land surrounding the approved dwelling on the western side of The Lakes Way that is to be retained in Palms Oasis ownership.

At this stage it is not possible to define a specific area (dwelling lot) to be retained by Palms Oasis Pty Ltd as there will need to be a survey done to identify the main site features. These site features will include delineation of the SEPP 14 Wetland boundary, plotting of the access route to the dwelling site and plotting of the site of the approved dwelling.

Rather than await the completion of this work Council could elect to support the preparation of a Planning Proposal with the final area for retention (dwelling lot) to be determined, based on certain principles, when the information is available.

The main principles to determine the dwelling lot should be to:

- Minimise the length of boundary that will interface with the land to be dedicated to National Park.

- Ensure that all Bushfire Asset Protection Zones and service corridors for the dwelling are contained in the dwelling lot.
- Ensure a buffer zone to the SEPP 14 Wetlands is contained in the land and be dedicated to National Park.
- Include the access route to the dwelling is contained in the dwelling lot.

THE PROCESS

In the event that Council supports the rezoning request, the only practical process is for it to proceed as a separate Planning Proposal. An option may have been to include it in the draft LEP that was adopted by Council on 8 May 2012, but this would involve further delaying the rezoning of all the other land at Pacific Palms. The main delay would be in the need to re-exhibit the Planning Proposal and draft LEP. This would be unreasonable for the other landowners who have agreed to participate in the development/conservation offset arrangement and who now only have to sign the Planning Agreements before the LEP is sent to the Minister to be made.

CONCLUSION

The request by Coastplan Consulting for Council to prepare a Planning Proposal involves an enlargement of the development area recommended by SMEC which was subsequently endorsed by Council.

Further encroachment into an area of high environmental value would normally not be supported, but in this case some flexibility is considered reasonable given the benefits that will accrue from the protection, into perpetuity, of the remainder of the land which is of high ecological value. It will also bring the matter to finality and will avoid Council from having to be involved in ongoing monitoring of activities on the land.

Given the ecological significance of the land and the importance of having the land protected it is considered that the requested extensions to the development area can be supported without unreasonably compromising the land's inherent environmental values.

To be consistent with the process that was followed for the other landowners involved in the development/conservation offset arrangement, the Planning Agreement, between Palms Oasis, Council and OEH to give effect to the dedication to National Park, should be signed by all parties before the LEP is sent to the Minister to be made. This will give ensure the dedication occurs once the LEP is made.

RECOMMENDATION:

- A. That in relation to Lot 83 DP 753168 and Lot 427 DP 861736, Boomerang Dr, owned by Palms Oasis Pty Ltd that Council:
 1. Resolve, under s55 of the Environmental Planning and Assessment Act, 1979, to prepare a Planning Proposal, for the rezoning of the land to permit extensions to the Palms Oasis Caravan Park and the balance of the land to 7(a1) Environmental Protection, as shown in Figure 2 of the Coastplan submission contained in Attachment B.
 2. The Planning Proposal, once prepared, be submitted to the Department of Planning and Infrastructure for a gateway determination.
- B. That Palms Oasis Pty Ltd be advised:
 1. That Council accepts the offer from them to enter into a Planning Agreement for the dedication of the balance of the land, excluding the site of the approved dwelling on

the western side of The Lakes Way on Lot 427 DP 861736, to the Office of Environment and Heritage as National Park.

2. That the cost of preparation of the Planning Agreement is to be fully funded by them.
3. The proposed Planning Agreement is to be exhibited concurrently with the Planning Proposal.
4. In the event that Council supports the Planning Proposal after it has been exhibited, that the Planning Proposal will be submitted to the Minister to be made after the Planning Agreement has been executed by all parties.
5. The area for retention by Palms Oasis around the approved dwelling site on Lot 427 DP 861736, The Lakes Way, will be based on the following main principles:
 - Minimising the length of boundary that will interface with the land to be dedicated to National Park.
 - Ensuring that all Bushfire Asset Protection Zones and service corridors for the dwelling are contained in the dwelling lot.
 - Ensuring a buffer zone to the SEPP 14 Wetlands is contained in the land to be dedicated to National Park.
 - Inclusion of the access route to the dwelling in the dwelling lot.

A: Location of Approved Dwelling on Lot 427 DP 861736, The Lakes Way



GREAT LAKES COUNCIL
These are the plans approved
by N.O.D. 2/12/05 dated: 04 JAN 2005
for Director Planning Services

- d) Public road access shall comply with section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'.

Details from an appropriately qualified person demonstrating compliance with these conditions, must be submitted to the certifying authority prior to the issue of the subdivision construction certificate and subdivision certificate

Reason: To ensure work is carried out in accordance with the determination and other statutory requirements.

37 RESOLUTION

(Moved L Gill/Seconded L Roberts)

That the above recommendation be adopted.

In accordance with Section 375A of the Local Government Act 1993 a division is required to be called whenever a planning decision is put at a Council or committee meeting. Accordingly, the Chairperson called for a division in respect of the motion, the results of which were as follows:

FOR VOTE - Cr J McWilliams, Cr C McCaskie, Cr L Roberts, Cr J Stephens, Cr K Hutchinson, Cr L Gill, Cr J Weate

ABSENT. DID NOT VOTE - Cr M Tuffy, Cr L Vaughan

Cr L Vaughan returned from temporary absence at 10.48am.

6 PES - Request for Preparation of Planning Proposal - Palms Oasis P/L

Index: SP-LEP-13 & SP-PP-05

Author: Manager Strategic Planning - Roger Busby

Ordinary Meeting: 14 August 2012

RECOMMENDATION:

- A. That in relation to Lot 83 DP 753168 and Lot 427 DP 861736, Boomerang Dr, owned by Palms Oasis Pty Ltd that Council:
1. Resolve, under s55 of the Environmental Planning and Assessment Act, 1979, to prepare a Planning Proposal, for the rezoning of the land to permit extensions to the Palms Oasis Caravan Park and the balance of the land to 7(a1) Environmental Protection, as shown in Figure 2 of the Coastplan submission contained in Attachment B.
 2. The Planning Proposal, once prepared, be submitted to the Department of Planning and Infrastructure for a gateway determination.
- B. That Palms Oasis Pty Ltd be advised:
1. That Council accepts the offer from them to enter into a Planning Agreement for the dedication of the balance of the land, excluding the site of the approved dwelling on the western side of The Lakes Way on Lot 427 DP 861736, to the Office of Environment and Heritage as National Park.
 2. That the cost of preparation of the Planning Agreement is to be fully funded by them.
 3. The proposed Planning Agreement is to be exhibited concurrently with the Planning Proposal.
 4. In the event that Council supports the Planning Proposal after it has been exhibited, that the Planning Proposal will be submitted to the Minister to be made after the Planning Agreement has been executed by all parties.
 5. The area for retention by Palms Oasis around the approved dwelling site on Lot 427 DP 861736, The Lakes Way, will be based on the following main principles:
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- Minimising the length of boundary that will interface with the land to be dedicated to National Park.
- Ensuring that all Bushfire Asset Protection Zones and service corridors for the dwelling are contained in the dwelling lot.
- Ensuring a buffer zone to the SEPP 14 Wetlands is contained in the land to be dedicated to National Park.
- Inclusion of the access route to the dwelling in the dwelling lot.

38 RESOLUTION

(Moved L Roberts/Seconded J Stephens)

That the above recommendation be adopted.

In accordance with Section 375A of the Local Government Act 1993 a division is required to be called whenever a planning decision is put at a Council or committee meeting. Accordingly, the Chairperson called for a division in respect of the motion, the results of which were as follows:

FOR VOTE - Cr J McWilliams, Cr C McCaskie, Cr L Roberts, Cr J Stephens, Cr K Hutchinson, Cr L Gill, Cr L Vaughan, Cr J Weate
 ABSENT. DID NOT VOTE - Cr M Tuffy

7 PES - Proposed Investigations before Planning Proposal - Blueys Estate

Index: NS - Blueys Estate
Author: Manager Natural Systems - Gerard Tuckerman
Ordinary Meeting: 14 August 2012

RECOMMENDATION:

That Council:

1. Provide in-principle support to allow the advancement of appropriate ecological and water quality studies to investigate the potential viability and scale of development/ conservation offset outcomes for land at Lots 110 and 112 DP1091944 The Lakes Way, Pacific Palms as the first stage in ascertaining if the proposal is able to proceed to more detailed investigations as part of a Planning Proposal.
2. Support the engagement of water quality consultant to undertake preliminary water quality assessment as per Council's brief to determine site constraints and suitability leading to a conceptual stormwater management strategy for the land and support the engagement of an ecological consultant to undertake preliminary flora and fauna investigations for land at Lots 110 and 112 DP1091944 The Lakes Way, Pacific Palms, on the basis that the studies are fully funded by the landowner and are managed by Council.

Confirm that the in-principle support is subject to the same requirements as the Release Area Program and for the Lampo Holdings proposals whereby the landowner/developer is to fund all studies and investigations and any necessary staff/ planning consultant resources.

39 RESOLUTION

(Moved L Roberts/Seconded J Stephens)

That the above recommendation be adopted.

In accordance with Section 375A of the Local Government Act 1993 a division is required to be called whenever a planning decision is put at a Council or committee meeting. Accordingly, the Chairperson called for a division in respect of the motion, the results of which were as follows:

FOR VOTE - Cr J McWilliams, Cr C McCaskie, Cr L Roberts, Cr J Stephens, Cr K Hutchinson, Cr L Gill, Cr L Vaughan, Cr J Weate
 ABSENT. DID NOT VOTE - Cr M Tuffy