

## **DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT**

8<sup>th</sup> March 2005

<b>DSDS1</b>	<b>TWO LOT SUBDIVISION AND DWELLING LOT 222 DP 852732 PAVANS ACCESS, GRASSY HEAD FILE: T6-04-651 TJN</b>
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### **SUMMARY:**

Reporting that Council has received an application to subdivide Lot 222 DP852732 which is contrary to the Kempsey Local Environmental Plan and for which two (2) objections have been received.

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**Applicant:** Amos and McDonald Surveyors  
**Subject Property:** Lot 222 DP 852732 100D Pavans Access,  
Grassy Head  
**Zone:** 1(a3) Rural "A3" Agricultural Protection Zone

### **Description of Proposal**

The proposal is to subdivide Lot 222 DP 852732 into two allotments of areas 9.43ha and 4.3ha respectively. The applicant also seeks to formalise an existing dwelling.

### **Heads of Consideration**

The proposal has been examined having regard for the Heads of Consideration identified under Section 79C(1) of the Environmental Planning and Assessment Act with the following matters considered to be of particular relevance to the proposal.

The proposal is not considered to be contrary to any State Environmental Planning Policy (SEPP).

### **North Coast Regional Environmental Plan (NCREP)**

Clause 12 of the North Coast Regional Environmental Plan requires that Council shall not grant consent to development on rural land

unless it has considered whether or not the development will cause a loss of prime crop or pasture land. The subject land is zoned "Agricultural Protection" and is classed as prime crop or pasture land.

Kempsey Local Environmental Plan 1987 (KLEP 1987)

The applicant seeks to subdivide land within a 1(a3) zone into allotments of less than 40 hectares through the use of Clause 35 and Schedule 2 of KLEP 1987. Schedule 2 states that nothing prevents Council from consenting to the subdivision of:

*"Land within the Zone 1(a3) in the Parish of Yarrahapinni – subdivision of land into allotments having an area of not less than 4 hectares where the land has a history of successful banana production and is currently fully planted for this purpose."*

In order to satisfy the provisions of this schedule the applicant is required to provide documentary evidence to support the proposal. The applicant has provided this stating: -

*"It is proposed to subdivide the existing one (1) lot into 2 lots. Under Schedule 2 (Cl. 35) of the Kempsey LEP whereby the land the Parish of Yarrahapinni having an area of not less than 4 hectares and a successful history of banana plantation may be subdivided.*

*Proposed Lot 1 is entirely planted with banana's except for 200m<sup>2</sup> on which the house is located."*

A document from the Banana Industry Committee has been included as evidence of banana production [\(Appendix A\)](#). No other specific documentation has been provided in addition to this.

## **Planning Comment**

As stated previously the applicant has provided an invoice for Industry charges for the 2004/2005 financial year as proof of production. This does not represent any actual productive capacity of continual agricultural success. Council has consistently required that any subdivision under this clause should be considered where the applicant has shown that the land has been continually used for the specified purpose in a productive manner over a number of years.

Documentation such as yearly budgets, profit margins, proof of sales and payment of wages are required as proof of productivity. That the applicant has failed to provide any of these in what is considered to be an extensive submission, including only an invoice for industry charges for the current financial year, may indicate that the land has not been used extensively for banana production.

From aerial photography on Council's Mapinfo system it appears that the lot is not entirely planted with banana's as required by KLEP 1987 [\(Appendix B\)](#).

This clause/schedule was included in KLEP 1987 as a means to redefine what is considered to be a minimum viable farming unit and not as a means to undertake rural residential subdivision. By granting consent, Council will be further fragmenting rural land in an area represented by smaller agricultural lots. Subdivision under this clause requires that the existing lot is planted and managed in such a way that it is capable of being divided into two (2) lots each capable of existing as a separate, profitable farming unit. The applicant is unable to show that the lot is totally planted for the purpose of a banana plantation, and in the absence of proof of continual use of land for the prescribed purpose the application should be refused.

As the requirements of Clause 35 have not been met, it would be necessary for the applicant to submit an application pursuant to SEPP 1 to vary the 40ha minimum allotment applying to the zone for which Department Infrastructure Planning & Natural Resources concurrence would be required.

### **Formalisation of existing dwelling**

As part of the application it is proposed to formalise an existing unauthorised workers dwelling, through firstly subdividing the land, giving the new lots separate dwelling entitlements, and then undertaking works to ensure that the dwelling complies with the provision of the Building Code of Australia.

The formalisation of this dwelling is entirely dependent on gaining approval for the subdivision. As the proposed subdivision does not comply with the provisions of KLEP 1987 it will be necessary to request either demolition of the building or render it uninhabitable. Detached dual occupancies are prohibited within a 1(a3) zone pursuant to Clause 32 of KLEP 1987.

### **Advertising**

The application was advertised in accordance with Councils Advertising Policy with two (2) objections being received:

Objection	Planning Comment
1 Land under such zoning should not be subdivided into lots less than 40ha.	1 Schedule 2 of KLEP 1987 allows subdivision into lots of 4ha.
2 If approved, it would set a precedent that would adversely affect the character of the rural land in the area.	2 Agreed, as both lots to be created are not fully planted with bananas it is considered that the lots will be more in character with the rural residential areas elsewhere in the shire, rather than the general rural zoning of the surrounding area.
3 The proposed developer will not be able to provide documentary proof that this form of land use has either been prolonged of continuous in nature.	3 The onus is on the applicant to prove that the use has been continuous. There is an absence of supporting documentation indicating that the objection is valid.
4 All existing plantations in Pavans Access are being removed, with bananas only being planted on the subject lot in the last twelve (12) months.	4 See Planning Comment 3.
5 It appears this process in the LEP is a "backdoor" for rural residential subdivision.	5 Schedule 2 is a means of redefining what a minimal viable farming unit is. Any application under this clause is carefully assessed by Council to ensure that productive agricultural land is not converted to rural residential "hobby farms".
6 It is contended that four (4) hectares of bananas will no	6 This schedule has not been revised since its inception. As

longer provide an acceptable income based on the current economic climate.

a result Council can only assess the proposal under the provisions of KLEP 1987, without taking into account the broader economic issues normally associated with an LEP amendment.

## **REPORT IMPLICATIONS:**

- ***Environmental***

***No significant environmental impacts are anticipated. However, the inappropriate use of the banana farming subdivision provisions of Kempsey Local Environmental Plan 1987 may result in essentially unplanned rural residential subdivision, which will have environmental impacts.***

- ***Social***

***The proposal does not satisfy the banana farming subdivision provisions, and is considered to be a rural residential subdivision which is out of character with the rural zoning of the area.***

- ***Economic (Financial)***

***The proposal does not satisfy the banana farming subdivision provisions, and will not result in the economic use of the land, which is prime agricultural land.***

- ***Policy or Statutory***

***The proposal contrary is KLEP 1987 and Clause 12 of NCREP.***

## **RECOMMENDATION:**

- A. That the applicant be invited to withdraw the application on the basis that the proposal does not comply with KLEP 1987.**
- B. That unless the application is withdrawn within fourteen (14) days of notice being given that the proposal be refused for the following reasons:**

- 1. It is contrary to the Kempsey Local Environmental Plan 1987.**
- 2. It will create an undesirable precedent for other similar proposals within the Shire.**

**C. That the objectors be advised of Councils decision.**

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**R B Pitt**  
**DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES**