



DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

July 12 2005

**DSDS3 SUBDIVISION OF LOT 1 DP 1077218
THE PONDS WAY, ALDAVILLA
FOR V & J SCHUBERT
FILE: T6-05-66**

SUMMARY:

Reporting on a proposal to subdivide the existing land parcel into two rural residential allotments.

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Applicant: Mr J Do
Owners: V and J Schubert
Subject Property: Lot 1 DP 1077218, 7 The Ponds Way, Aldavilla
Zone: 1(c) Rural (Small Holdings) "C"

Background

The development application was lodged on the 14 February 2005 to create 2 rural residential allotments.

The application is integrated development and was referred to the NSW Rural Fire Service seeking issue of a Bushfire Safety Authority on the 25 February 2005. The NSW Rural Fire Service issued an unconditional Bushfire Safety Authority notice on the 21 April 2005.

Currently all of the properties adjoining lot 1 DP1077218 along the full length of its northern boundary have some form of overflow arrangement that discharges wastewaters from the septic systems to the ground surface onto the subject property. Council at its meeting of the 8 February 2005 resolved (2005.74) the following in respect to sewerage Sherwood Road/Aldavilla area: -

"That a further report, on the feasibility assessment of sewerage Sherwood Road, Aldavilla, grinder pump technology, be prepared."

Macleay Water advises that investigation is being carried out to assess the Sherwood Road, Aldavilla options.

Proposal

The proposal is to subdivide lot 1 DP 1077218 into 2 rural residential allotments as shown in the plan attached to this report as [\(Appendix L\)](#). The subject property is located at 7 The Ponds Way, Aldavilla and has an existing dwelling on the west side with vehicle access off Sherwood Road.

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.

Threatened Species Conservation Act

The land contains two vegetation types that are considered to be endangered ecological communities (EEC) under the Threatened Species Conservation Act. These communities are Freshwater Wetlands on Coastal Floodplains of the NSW North Coast and Subtropical Coastal Floodplain Forest.

The proposal will result in the loss of 0.36 hectares of vegetation that forms part of these EECs. Indirect impacts include increased nutrient loading of water flowing into the EEC from on-site effluent disposal, possible future vegetation removal by residents to increase usable yard space, introduction of weeds and domestic pets.

State Environmental Planning Policy No 44 – Koala Habitat Protection

The presence of Forest Red Gum and Tallowood at more than 15% of the total canopy means the site contains potential koala habitat. However, survey of the land failed to confirm koalas on-site, and consequently, the land does not contain Core Koala Habitat.

Potential Health Concerns

The proposed new allotment will have an area of approximately 1.495 hectares. Once the Bushfire requirements, flora and fauna

recommendations and the requirement to locate any future dwelling above the 1 in 100 Year Flood level on the proposed new allotment are implemented, any future building would be restricted to an area of approximately 1,000m², located at the north west corner of this new lot.

At this location up to five existing allotments fronting Sherwood Road will drain stormwater and overflow wastewaters to the rear and directly impact upon the proposed building area for this development.

If the subdivision proposal is allowed to pass in its current form any future owner could build within the allocated building area and be adversely affected by wastewater runoff from the adjoining lots to the north. The following options were considered: -

(a) *Allow the Subdivision proposal to proceed as submitted*

This option does not address the likely health risks to the owners of the new lot emanating from the adjoining lots that currently have overflow pipes directing wastewater onto this land parcel. It should be noted that this problem is not being generated by this development proposal but by others for which Council has a responsibility to ensure these wastewater systems are operating properly, in accordance with AS/NZ 1547.

(b) *Approve of the land subdivision only* and place a restriction on the title of the new allotment preventing erection of a dwelling until Council has made satisfactory arrangements for the sewerage of the adjoining small allotments fronting Sherwood Road. This is not a practical option at this time because it is unclear whether Council will proceed to provide a sewer system to service the Sherwood Aldavilla area.

(c) *Issue a Deferred Commencement Approval*

This option could only be taken if Council committed itself to a course of action to resolve the effluent disposal issue on adjoining land.

(d) *Refuse this Development Application for subdivision.*

The issue of wastewater overflow onto this land parcel from adjoining property is a matter for Council and is not being generated by this development. While Council could refuse this application based on the health risk posed by failing of onsite

effluent systems on adjoining land, it is Council's responsibility to address this issue.

REPORT IMPLICATIONS:

- ***Environmental***

A flora and fauna assessment has been submitted with the application addressing the requirements of the Environmental Protection and Biodiversity Conservation Act 1998 and State Environmental Planning Policy 44 – Koala Habitat Protection (Darkheart December 2004).

This assessment concludes that, provided the recommended ameliorative measures are implemented, the proposal is unlikely to have any significant impact on threatened species, migratory species, ecological communities, or their habitats.

- ***Social***

The social cost of allowing this development at this time is that it is exposing additional people to a potential health risk in an area where the existing septic wastewater systems are failing on the adjoining small allotments (766m²).

- ***Economic (Financial)***

It is considered unlikely that there will be any adverse economic impacts as a result of the proposal. However once a dwelling is established on the new allotment (within the building zone) the new owners will no doubt seek to have the issue of wastewater disposal from the adjoining allotments addressed in the short rather than the long term.

Council at its meeting of the 8 February 2005 resolved to seek a report, on the feasibility assessment of sewerage Sherwood Road, Aldavilla, by grinder pump technology. Adoption by Council of this or other technologies will require allocation of council funds.

RECOMMENDATION:

- A That Council initiate action in relation to the effluent disposal systems of the existing allotments in Sherwood Road adjoining the proposed development to ensure no public health risks arise as a result of this development.**

B Council grant consent subject to the following conditions: -

(a) The following is a "deferred commencement" consent pursuant to Section 80(3) of the Environmental Planning and Assessment Act. This consent shall not operate until the following matters have been satisfied:-

(i) Submission of an environmental management plan to Council's satisfaction that details the implementation of the recommendations and ameliorative measures contained in Darkheart Report dated December 2004 including the timing of works prior to release of the Subdivision Certificate, restrictions on title for ongoing management, compensatory works and weed removal and management.

(ii) Rectification of the failing onsite effluent disposal systems on adjoining land in Sherwood Road, through installation of pump out systems, or connection to reticulated sewerage system.

(b) General

1 The development referred to in this application is to be carried out substantially in accordance with the approved development Plan No DA01 dated 21 January 2005 and as modified by any conditions of this consent.

2 Implementation of the Environmental Management Plan including required works prior to issue of the Construction Certificate and Subdivision Certificate and appropriate restrictions on title.

3 This consent does not permit commencement of any works. Works are not to commence until such time as a Construction Certificate has been obtained. A Construction Certificate may be

obtained from Council upon application being made or from an accredited certifier.

- 4 Two days prior to commencing work Form 7 under Environmental Planning and Assessment Act Regulations, Notice of Commencement of Building or Subdivision work and Appointment of Principal Certifying Authority is to be submitted to Council

- 5 Submission of a suitable restriction as to user over the title of proposed lot 1 in this development requiring an Aerated Wastewater Treatment System only with subsurface irrigation complying with AS/NZS 1547-2000.

Kempsey Shire Council is to be nominated as the sole party to vary, modify or extinguish this restriction.

A copy of the restriction is to be lodged with Council for approval prior to the issue of the Subdivision Certificate.

- 6 Submission of a suitable restriction as to user over the title of proposed lots 1 and 2 in this development restricting future rural residential development to the area of each allotment that is above the designated 1 in 100 Flood Contour of 13 m AHD except future onsite domestic effluent disposal systems that are to be located above the 1 in 20 Flood level. The restriction is to be clearly marked on the plan of subdivision.

Kempsey Shire Council is to be nominated as the sole party to vary, modify or extinguish this restriction.

A copy of the restriction is to be lodged with Council for approval prior to the issue of the Subdivision Certificate.

- 7 Submission of an appropriate positive covenant to be placed over the title of proposed allotment 1 allowing for provision of the following: -

- i) That successive owners be required to maintenance the Asset Protection Zones

within proposed lot 1 as described in Section 4.1 of the Bushfire Risk Assessment prepared by Midcoast Environmental Services dated the 1 November 2004 to the minimum requirements set down by the NSW Rural Fire Service at any time.

- ii) The major recommendations of the Darkheart Flora and Fauna Assessment dated December 2004 be implemented.

The restriction is to be clearly marked on the plan of subdivision.

Kempsey Shire Council is to be nominated as the sole party to vary, modify or extinguish this restriction.

A copy of the restriction is to be lodged with Council for approval prior to the issue of the Subdivision Certificate.

- 8 Applicant is to submit with the final plan of subdivision copies of any instruments under Section 88B or E of the Conveyancing Act 1919 relevant to any restrictive covenants, assessments or rights of way created by or affected by this subdivision.
- 9 Submission of an application for Subdivision Certificate pursuant to Section 4A of the Environmental Planning and Assessment Act 1979, which authorises the registration of the plan of subdivision.

Public Utilities

- 10 The applicant shall make satisfactory arrangements with Telstra Australia for the provision of underground telephone plant to each lot. A letter from Telstra stating that satisfactory arrangements have been made for the provision of underground telephone plant is to be lodged with Council prior to release of the linen plan.

- 11 The applicant is to make satisfactory arrangements with CountryEnergy for the supply of electricity to each lot. A letter from Country Energy stating that satisfactory arrangements have been made for the provision of underground electricity supply to this development is to be lodged with Council prior to release of the linen plan.
- 12 Any necessary alterations to or relocations of public utility services to be carried out at no cost to Council.

Contributions

- 13 The applicant is to pay a contribution towards Outdoor Recreation for each additional dwelling unit after the first unit in accordance with Council's Section 94 Plan for Outdoor Recreation. The contribution is to be paid prior to the release of the Subdivision Certificate, at the rate prevailing at that time. The current rate is \$403 per additional dwelling unit, i.e \$403 x 1 E.T = \$403 total for 2005/2006. (Indexed).
- 14 The applicant is to pay a contribution towards upgrading Arterial Road (River street) for each additional building entitlement created. The contribution is to be paid prior to the release of the Subdivision Certificate, at the rate prevailing at that time. The current rate is \$1609 per additional building entitlement created, i.e. \$1609 x 1 = \$1609 total for 2005/2006(Indexed).
- 15 The applicant is to pay a contribution towards upgrading Sherwood Road for each additional building entitlement created. The contribution is to be paid prior to the release of the Subdivision Certificate, at the rate prevailing at that time. The current rate is \$1466 per additional building entitlement created, i.e. \$1466 x 1 = \$1466 total for 2005/2006(Indexed).
- 16 Submission of an application for a Certificate of Compliance pursuant to Section 305 of the Water Management Act 2000 and the lodgement of a

Certificate of Compliance indicating that the requirements of Section 306 of the Water Management Act 2000 have been met, prior to release of the Subdivision Certificate.

- 17 You are advised that a Certificate of Compliance pursuant to Division 5 of the Water Management Act 2000 will be issued by Council, subject to the following matters being complied with:
- (a) Payment of a contribution towards District Water supply at the rate of \$1256 per equivalent tenement, i.e $\$1256 \times 1 \text{ E.T} = \$1,256$ total for 2005/2006. (Indexed).
 - (b) Payment of a contribution towards Water Supply Augmentation at the rate of \$3,563 per equivalent tenement, i.e $\$3,563 \times 1 \text{ E.T} = \$3,563$ total for 2005/2006. (Indexed).
 - (c) Provision of a water service conduit crossing across the road pavement in The Ponds Way to service proposed lot 1 using under road boring techniques. The applicant is to liaise with Macleay Water for requirements prior to installation and this work is to be completed prior to the issue of the Subdivision Certificate.

Information to be submitted with the Construction Certificate

- 18 Detailed Engineering Plans providing for civil engineering works within the subject property as shown in the plan of application (10574-04 Amendment "B" dated 1/6/04) in strict compliance with Council's Development Control Plan No 36 *Engineering Guidelines for Subdivision and Development.*
- 19 The hours of operation of the construction activity are to be confined to 7.00am to 6.00pm, Mondays to Fridays, and 7.00am to 12 noon Saturdays.

- 20 Provision of functional vehicular access to all proposed lots i.e. provision rural type access in accordance with Council's Standard for Private vehicular access to rural roads and having regard to the contents of the Bushfire Protection and Ecological Assessments. Applicant is to consult Council's Sustainable Development Services Department for details prior to lodging the application for construction certificate.
- 21 Detailed engineering plans providing for a rural stormwater drainage system to convey all existing and proposed flows through this development pursuant to Australian Rainfall and Run-off 1987.

In order to protect the proposed future building area on proposed lot 1, provide an interallotment piped stormwater drainage system to collect and convey stormwater runoff from the adjacent small residential allotments to the natural drainage system within an appropriately sized private drainage easement. Detailed Engineering Plans are to be submitted with the application for Construction Certificate.

Inspections

- 22 The following inspections are required to be made and a minimum of 48 hours notice is necessary where requesting an inspection. Appointments will be made in accordance with the inspection program for the area. Where inspections are carried out by an accredited certifier other than Council, compliance certificates will be required following each inspection and forwarded immediately to The Principal Certifier.

Note: Accounts will be forwarded for inspections that are required and/or undertaken in addition to those inspections for which a pre-payment has been made.

Inspections required:

- (a) The inspections for the required civil engineering works are listed in Section 6.3 of Council's Engineering Guidelines for Subdivision and Development (DCP 36) and must be undertaken prior to the appointed contractor proceeding to the next stage of the construction.
- (b) Council is to inspect all Telstra and CountryEnergy cables where they cross existing and or new Council sewer or watermains prior to the contractor backfilling the trench.

Notes

- 1 If deferment of Section 94 and 64 Contributions are required, a written request accompanied by a copy of the relevant title deeds must be lodged with Council.

When deferring payment the subdivider will be required to enter into a deed with Council, at the owner's expense. The agreement will require a Caveat to be endorsed on the allotment Title and will make provision for Council to be paid the upgrading contribution when the allotment is sold. The amount of contribution to be paid will be the rate per allotment fixed by Council for that road for the year in which the transfer takes place. The linen will be released once the Deed and Caveat have been registered.

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K J Ward
ACTING DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES