



DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

9th August 2005

**DSDS4 SUBDIVISION OF LOTS B AND C DP 399906
OFF CROADS ESPLANADE, SMITHTOWN
FILE: T6-05-117 AJC**

This report should be read in conjunction with Confidential Report DSDS 2.

SUMMARY

Reporting on an objection pursuant to the provisions of State Environmental Planning Policy No 1 to a development standard that would prohibit the proposed subdivision.

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Applicant: Dutton Engineering Excellence Pty Ltd
Subject Property: Lots B and C DP 399906 Nos 2 and 4 Croads Esplanade, Smithtown
Owners: R and S Walker and M and S Rodwell
Zone: 2(v) Village

Background

The application is to subdivide two existing lots into three lots, that is, one additional allotment. The land is subject to flooding in the village of Smithtown. An initial review revealed that the proposal was not permissible under the development standards within Kempsey Local Environmental Plan 1987 (Clause 12(1)(a)(c)).

The applicant was informed that lodgement of a State Environmental Planning Policy No. 1 Application objecting to Clause 12(1)(a)(c) was necessary.

The applicant has now submitted a State Environmental Planning Policy No. 1 (SEPP 1) Objection to the development standard for Council to consider.

There are two existing dwellings on the subject land. On proposed lot 1 there is an existing brick dwelling which has a floor level above the Flood Planning Level. On proposed lot 2 there is an existing weatherboard dwelling that has a floor level of only 4.78metres which is below the current Flood Planning Level (FPL) of 5m AHD but above the assessed (1 in 100year flood level of 4.5m AHD plus 500 mm freeboard). Proposed Lot 3 is vacant.

Proposal

The proposal is to create one(1) additional allotment from the two existing allotments having an area of approximately 720 m². The two existing allotments will each have a modified area of 750 and 770 square metres respectively.

A plan showing the subdivision proposal is attached to this report [\(Appendix F\)](#).

The subject properties are located at 2 & 4 Croads Esplanade, Smithtown as shown on the plan attached to this report. [\(Appendix G\)](#)

This proposal does not comply with the development standard contained in Clause 12(1)(c) of Kempsey Local Environmental Plan 1987 and the applicant has submitted an objection under SEPP 1 to the development standard. A copy of the objection is appended to this report [\(Appendix H\), Part 2](#).

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 relevant in relation to the matter at hand.

Kempsey Local Environmental Plan 1987

Clause 12 states: -

- 12 (1) *The council must not consent to the subdivision of land in Zone No 1(c), 2(a), 2(b1), 2(b2), 2(c) or 2(v) unless the council is satisfied that: -*
 - (c) *in the case of land in Zone No. 2(a), 2(b1), 2(b2), 2(c) or 2(v), the allotments to be created by the subdivision each include not less than 500 square metres of land which is outside the limit of the 1 in 100 year flood and*

which is not subject to an unacceptable risk from localised flooding during a 1 in 20 year storm event.

The subject land is not outside the limit of the 1 in 100 year flood, from the Macleay River and the proposal does not comply with the development standard. None of the 3 lots have land above the 1 in 100 year flood level. While Lot 3 could be filled to be above the 1 in 100 year flood level, it would still not be outside the limit of the 1 in 100 year flood, as the land would be surrounded by flood water in such an event.

An average depth of 0.57metres over the proposed allotment will occur during the 1 in 100 year flood event. Based on a flood assessment on nearby land (Fitzgerald Avenue by Webb McKeown February 1999) velocity in the vicinity is low, being 0.1m/sec.

The 2001 Flood was considered to be a 1 in 12.5 year flood event from the Macleay River. The indicative depth in the locality (Figure 6, February 2004 report, Webb McKeown Pty Ltd) was 0.5 metres. Floodwaters during this event did affect part of proposed new lot 3 along the eastern boundary.

The applicant has stated a preference for not filling the proposed Lot 3 but is prepared to, if required, fill 500 square metres of proposed lot 3 to the 1 in 100 Year Flood Level.

Objection to Clause 12(1)(c) Under SEPP 1

The applicant has submitted an objection. SEPP 1 provides for an applicant to justify why the development standard is unreasonable or unnecessary in the circumstances. The applicant's justification is:

"The standard is unreasonable because the land is entirely surrounded by other village lots and Council's Policy on development of flood prone land permits subdivision of this land because the product of depth x velocity is less than one (in this case 0.3)."

Council's Flood Risk Management Policy

The relevant section applicable to this development proposal is Section 6.3.5 *Urban Subdivision*. The following criterion is required to be met: -

- *When land is within a flood prone area, subdivisions will not be approved unless contour surveys of land by a Registered Surveyor or qualified Engineer show that at least 500 square metres of each proposed lot will be above the 1 in 100 and/or highest flood level.*
- *The 500m² identified in the subdivision is to be utilised for the erection of buildings on the site.*

- *In respect to the villages subdivisions may be permitted provided that it can be shown that the product of the depth and velocity of flow of waters during a 1 in 100 flood is equal to, or less than, one (1). (See Annexure 5), and suitable and adequate arrangements can be made for evacuation.*
- *If filling is to be considered, the maximum depth of filling is not to exceed 1metre.*

If the proposed lot is not to be filled then the proposal will not comply with the abovementioned first two points.

There is enough information to ascertain that the third requirement dealing with the product of depth (D) and velocity (V) during the 1 in 100 year flood event can be easily met. For example the DxV at the subject site would be 0.06, which is well below the requirement specified in the policy of $DxV < 1$.

The applicant's preference not to fill the proposed allotment means that the development proposal will not comply with the current council policy. Any proposal by the applicant to fill the proposed additional allotment is to be accompanied by a Flood Impact Assessment prepared by a recognised Consultant Engineer having expertise in this field and using a suitable hydraulic model, demonstrating that the filling when placed will not alter current flooding patterns, depth and velocity in the immediate locality nor obstruct local drainage.

The NSW Floodplain Management Manual 2005

The new Manual requires Council to consider flood events up to Probable Maximum Flood (PMF).

The true hydraulic hazard category for this site up to and including the 1 in 100 year Flood is LOW. However for floods between the 1 in 100 year to the Probable Maximum Flood at some point the hydraulic hazard category will become HIGH.

Consideration should be given to the cumulative impact of similar development in this area of the floodplain, that will add to the damages bill including social and environmental aspects.

Potential Cumulative Impacts

The minimum lot size for subdivision in Zone 2(v) is 500m². Within Smithtown there are 3 land parcels of about 1 hectare which could potentially yield about 15 lots each land parcels of 2541m², 1784m² and 1752m² could yield a further 6 lots, and a further 14 land parcels of between 1,000m² and 1308m² which could yield another 14 additional lots. This results in a potential for an additional 65 lots within Smithtown, which is a significant additional population.

This proposal will have a *cumulative impact*, as it will encourage similar developments, which will place an additional load upon readiness, response and recovery plans as at risk population's increase. Although this development on its own may not have a significant impact on flood levels, risk, evacuation needs or potential damage, the cumulative impact of a number of such developments will likely have significant impact and may be unacceptable.

Any proposal to step outside the framework NSW Floodplain Development Policy by approving of this or and similar development within the floodplain without regard to the contents and process in the manual may void the indemnity currently offered to Council under Section 733 of the local Government Act 1993.

REPORT IMPLICATIONS:

- ***Environmental***

The proposed development will not generate any adverse environmental impacts.

- ***Social***

This development will place increased population in a flood prone area, creating an additional load on emergency services and the cost associated with emotional, mental and physical health of the residents during and after flood events.

Council should consider the cumulative impact of similar development in this locality as part of its Lower Macleay Floodplain Management Plan in order to effectively manage the risk on a strategic basis.

- ***Economic (Financial)***

The new property owner will experience the economic and or financial impacts and any loss will depend upon the size of any flood event. For example minor flooding of the new allotment may damage fencing, garden sheds and or require general clearing of debris external to the dwelling. The new property owner will likely experience loss of wages, sales and or production as a consequence.

However, should this development proposal encourage similar developments the cumulative impacts will be significant. Therefore council should ensure that a strategic approach is applied to management of the Lower Macleay Floodplain.

RECOMMENDATION:

That the application for subdivision of Lots B and C DP 399906, Croads Lane, Esplanade, Smithtown, into 3 lots be refused for the following reasons:

- A** The proposal is contrary to Clause 12(1)(c) of Kempsey Local Environmental Plan 1987 as none of the 3 proposed lots include any land outside the limit of the 1 in 100 year flood.

- B** The applicant's objection to the standard under State Environmental Planning Policy has not demonstrated that the standard is unreasonable or unnecessary in the circumstances, as the standard prevents cumulative impacts of additional houses being a risk during flood events.

- C** The proposal would set a precedent that could lead to significant cumulative impacts, particularly for the additional load on emergency services in a major flood event.

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R B Pitt
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES