



**KEMPSEY**  
Shire Council

## **DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT**

13 September, 2005

<b>DSDS7</b>	<b>PROPOSED VARYING OF 88B INSTRUMENT TO RELOCATE DWELLING ENVELOPE LOT 23 DP 1080475 CHAIN O PONDS ROAD, COLLOMBATTI FILE: T6-05-169      CSR</b>
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### **SUMMARY:**

Reporting on a proposal to vary the 88B instrument created for Lot 2 DP 235563 to relocate the dwelling envelope.

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**Applicant:** Malcolm Davies  
**Subject Property:** Lot 23 DP 1080475 Chain O Ponds Road, Collombatti  
**Zone:** 1(a3) "Agricultural Protection"  
**Proposal:** Relocate s88B Instrument Dwelling Envelope

### **Background**

The applicant wishes to situate his dwelling outside of the approved development envelope on the subject lot.

Council is the beneficiary to vary the 88B instrument and this may only be done by the execution of Council under seal. The development application for the house is being processed, and consent is likely to be issued in the near future.

The original development envelope was a requirement for the subdivision of the original Lot 2 DP 235563 Collombatti into five lots of around 40 hectares each. The development envelopes were based on vegetation mapping (aerial photography).

The original recommendation in the Bushfire Protection Assessment for the subdivision was for 100 metres clearance around each house site 'due to the relative isolation of these properties'.

A more detailed report prepared to support the variance of the 88B Instrument dated 20<sup>th</sup> July 2005 states that construction of the house to level 2 standard (AS 3959) and a 30 metre Asset Protection Zone would satisfy the construction and fuel loading requirements of "Planning for Bushfire Protection". The 88B Instrument will need to identify that Level 2 Construction is required.

The Rural Fire Service have not yet provided their advice.

The Fauna and Flora Report conducted for the subdivision stage of the development recommended 5 hectare development envelopes to reduce impacts.

A supplementary report from DARKHEART Eco-consultancy concludes that the new envelope does not affect the conclusions and recommendations in relation to flora and fauna impacts.

## **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.

### ***REPORT IMPLICATIONS:***

- ***Environmental***

***Varying the 88B instrument and altering the position of the development envelope will have a minimal environmental impact due to the previously disturbed/cleared nature of the subject area.***

- ***Social***

***There are no significant social impacts resulting from this proposal.***

- ***Economic (Financial)***

***No significant economic impacts.***

- ***Policy or Statutory***

*Council is able to approve the dwelling in the new location under the terms of the Section 88B restriction on the title. It is appropriate to amend the 88B instrument to reflect the new dwelling envelope location. This requires a Council resolution to apply Council seal to the 88B instrument amendment.*

**RECOMMENDATION:**

- 1 That upon the owner (M and L J Davies) endorsing application to alter Restriction No 1 [\(Appendix K\)](#) associated with 88B Instrument for folio identifier 23/1080475, Council endorse the instrument under seal.
- 2 The restriction be amended to:
  - (a) identify the new building envelope location [\(Appendix L\)](#) .
  - (b) require the dwelling to be setback 30 metres from the side boundary.
  - (c) require the ongoing provision of a 30 metre asset protection zone.
  - (d) construction of the house to Level 2 standard.
- 3 That the applicant be advised accordingly.

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