



DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

11 October 2005

**DSDS1 SUBDIVISION OF LOTS B AND C DP399906
OFF CROADS ESPLANADE, SMITHTOWN
FILE: T6-05-117 AJC**

This report should be read in conjunction with Confidential Information only Report DSDS 1.

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 & C DP399906, Nos. 2 & 4 Croads Esplanade, Smithtown
Owners: R & S Walker and M & S Rodwell
Zone: 2(v) Village

Background

At the Ordinary meeting of Council held on the 9 August 2005 Council resolved: -

- 1. That this matter be subject to a Works Inspection and site profiles be provided at the inspection.*

2. *That the Director Sustainable Development Services report back to the next meeting of Council on suitable conditions of approval should this development be approved.*

In accordance with resolution 2, a report was submitted to Council at its meeting of 13th September 2005 with suitable conditions if Council were to approve the application. Council resolved to note the information pending Council's works inspection.

A Works Committee Inspection was carried out on 20th September 2005, however, a quorum was not present and the matter is now referred to Council for determination.

Proposal

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

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

The subject properties are located at 2 & 4 Croads Esplanade, Smithtown.

This proposal does not comply with the development standard contained in Clause 12(1)(a)&(c) of Kempsey Local Environmental Plan 1987 and the applicant has submitted an objection under SEPP 1 to the development standard.

In response to Council's resolution point 2 of the 9 August 2005 the following draft conditions are provided should Council resolve to approve this development based upon not filling the lots: -

General

- 1 The development referred to in this application is to be carried out substantially in accordance with the approved development Plan marked "*PROPOSED SUBDIVISION OF LOTS B & C DP399906, CROADS ESPLANADE SMITHTOWN*" and as modified by any conditions of this consent.
- 2 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.

3 Two days prior to commencing work Notice of Commencement of Building or Subdivision work and Appointment of Principal Certifying Authority is to be submitted to Council.

4 A suitable restriction as to user is to be applied over the title of proposed lot 3 prohibiting vehicular access off the Smithtown Road frontage of this proposed allotment.

The restriction is to be clearly marked on the plan of subdivision. Kempsey Shire Council is to be named on the restriction as the sole party to modify and/or withdraw this restriction.

5 Submission of a suitable restriction as to user over the title of all the lots in this subdivision restricting all proposed dwellings to a flood planning level of 5.00 metres on A.H.D., in accordance with Council's Flood Risk Management Policy.

The restriction is to be clearly marked on the plan of subdivision. Kempsey Shire Council is to be named on the restriction as the sole party to modify and/or withdraw this restriction.

6 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 prior to the issue of the Subdivision Certificate.

7 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

8 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 issue of the Subdivision Certificate.

- 9 The applicant is to make satisfactory arrangements with Country Energy 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 issue of the Subdivision Certificate.
- 10 Any necessary alterations to or relocations of public utility services to be carried out at no cost to Council.

Contributions

- 11 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 \$490 per additional dwelling unit, i.e. \$490 x 1 E.T = \$490 total for 2005/2006. (Indexed)
- 12 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.
- 13 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 \$1,256 per equivalent tenement, i.e. \$1,256 x 1 E.T = \$1,256 total for 2005/2006. (Indexed)
 - (b) Relocate and extend the existing town sewer main to the side boundaries in a 3metres wide easement to serve all the lots in the proposed development the proposed development, at full cost to the applicant. Detailed plans are to be submitted for approval prior to the issue of the Construction Certificate.
 - (c) Relocate and or extend all existing internal sewer pipes such that they are wholly contained within the proposed new allotment boundaries. Details are to be submitted

for approval prior to the issue of the Construction Certificate.

Information to be submitted with the Construction Certificate

- 14 Detailed Engineering Plans providing for civil engineering works associated with this development in strict compliance with Council's Development Control Plan No 36 *Engineering Guidelines for Subdivision and Development*.

Roads

- 15 Prior to release of the Subdivision Certificate, provision of a concrete footpath along the full frontage of all the proposed lots in Croads Esplanade linking the existing concrete footpaths in Main Street and from Smithtown Bridge in accordance with Section D1.16(5) of Development Control Plan No 36.
- 16 Prior to release of the Subdivision Certificate, provision of functional vehicular access to all proposed lots (including existing lots). The three existing gutter bridges servicing the existing allotments are to be removed and vehicle access reconstruction in accordance with the provisions of *DCP 36 Engineering Guidelines for Subdivision and Development*.
- 17 No trees to be lopped or removed except in accordance with Council's Policy on Tree Preservation, and with the written consent of Council.
- 18 Details of the method(s) to be employed by the appointed Civil Contractor to dispose of cleared vegetation shall be lodged with Council for approval prior to Council issuing the Construction Certificate. **Council will not accept burning off of fallen materials onsite as a means of disposal.**
- 19 The existing concrete footpath is to be adjusted for level to allow for the future construction of a vehicle access using the standard contained in *DCP 36 Engineering Guidelines for Subdivision and Development* and not a gutter bridge.
- 20 Prior to release of the Subdivision Certificate the applicant is to restore, replace, reconstruct any damage caused to urban road pavements, surfaces or street furniture on the haulage route(s) used for the construction of the subdivision.

Haulage routes for the importation of materials are to be agreed to by the Director of Engineering prior to issuing of the required Construction Certificate.

Inspections

- 21 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 water mains prior to the contractor backfilling the trench.

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.

- ***Department of Infrastructure Planning and Natural Resources***

Council's attention is drawn to the report to Council on 9th August 2005 in relation to rezoning of land in Gladstone. The Department Infrastructure Planning and Natural Resources advised that it is inappropriate to continually use SEPP 1 to vary the provisions of Clause 12 of the Kempsey LEP 1987, which precludes subdivision of land within the floodplain.

RECOMMENDATION:

That the application for subdivision of Lots B and C DP 399906, Croads 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