

# DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

15<sup>th</sup> November 2005

**DSDS3 DWELLING – MCKAYS ACCESS, KINCHELA  
FILE: T6-03-507 TJN**

## SUMMARY:

Reporting that Council has received further information pertaining to an application to erect a rural dwelling.

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**Applicant:** Mr S Naylor  
**Subject Property:** Lot 100 DP 754396, Lot 1 DP 360097 and Lot 1 DP 937288, McKays Access, Kinchela  
**Zone:** 1(a1) (Rural 'A1' Zone)

## Description of Proposal

The proposed development involves the construction of a dwelling and garage.

## Background

At its meeting of 22<sup>nd</sup> June 2004 Council considered the question of legal access to the proposed dwelling. [\(Appendix G\)](#) The applicant proposes to gain access through McKays Access an unformed, non dedicated access way which runs through Hat Head National Park. Council subsequently resolved:

*"That this matter be deferred and the applicant be advised that Council will further consider the application when the applicant obtains a legally binding 'right of way' over the neighbouring property so as a legal access to the property is achieved."*

The applicant has since consulted with the adjoining neighbour and has been unable to come to an agreement regarding the right of way.

Since considering the application it has been revealed that Mackays Access is not a "road" and is simply an informal access track.

The applicant has also consulted Council concerning the feasibility of gaining access from Fairweathers Lane. In the event that access is denied through the National Park, the applicant has indicated a willingness to construct this alternative access.

## Comment

The DEC have entered into a 5 year access agreement with the owners to allow access directly over the National Park. This is the applicants preferred means of access given the potential cost of constructing an access via Fairweathers Lane.

While it is doubtful that access will ever be denied, a perpetual legal access arrangement needs to be put in place. The applicant has agreed to form Fairweathers Access in the event access across the National Park is denied. ([Appendix H](#))

As the subject lot is the only lot that would benefit from formation of Fairweathers Lane, the owners should be required to enter into a Deed of Agreement with Council stating that in the event access across Hat Head National park is denied, Fairweathers Lane is to be formed and maintained to an all weather, 2 wheel drive standard access at no cost to Council. This is to be registered as an 88E Instrument over the title.

Having regard for the above it is considered that the intent of Council's previous resolution has been met and consent is recommended.

The applicant has provided written agreement to these access provisions. ([Appendix H](#))

### **REPORT IMPLICATIONS:**

- ***Environmental***

***The previously submitted Council report regarding the matter concluded that due to the minimal clearing required to accommodate Asset Protection Zones, ecological impacts would be negligible.***

***On-site waste water treatment will be required, provided that this is undertaken in accordance with the relevant requirements, there will be no adverse impacts arising from the treatment of waste water.***

***Constructing an all weather access through Fairweathers Lane may have an adverse environmental impact. However, should this be required it will be subject to separate development approval, with the environmental impacts being addressed at that stage.***

- ***Social***

***There is considered to be no potential for adverse social impacts as a result of the proposal.***

- ***Economic (Financial)***

*No significant economic impact is anticipated.*

- *Policy or Statutory*

*The proposal is deemed to comply with all relevant statutory requirements.*

## **RECOMMENDATION**

That the application be approved in the following manner:

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:-

- (a) The owner of the subject land shall enter into a Deed of Agreement with Council to construct and maintain a 2 wheel drive all weather road to a Council approved standard in the event that access through the National Park is denied.
- (b) Consolidation of the 3 lots into 1 lot under one title.

Upon the above matters being satisfied, the consent may commence, subject to the following conditions:

- 1 The development referred to in this application is to be carried out substantially in accordance with the approved development plans as modified by any conditions of this consent.
- 2 This consent has been issued on the basis that Council has been appointed as the Principal Certifying Authority and Council has accepted the appointment and will be issuing the construction certificate.
- 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 and the appointment of a Principal Certifying Authority.
- 4 A Construction Certificate shall not be issued until all relevant conditions of this consent have been complied with.
- 5 Two days prior to commencing work, a Notice of Commencement of Building or Subdivision work and Appointment of Principal Certifying Authority is to be submitted to Council.
- 6 The dwelling and garage are not to be occupied until all conditions of Council's consent have been complied

with to the satisfaction of Council and an Occupation Certificate has been obtained.

- 7** Before the commencement of site works, demolition or building, the following activities must be completed:
- a** Installation of soil erosion and sedimentation control devices.
  - b** Installation of safety fencing/hoardings between the property and the street
  - c** Protection barriers for existing trees
  - d** Installation of builder's toilets
  - e** Installation of signage in prominent, visible position including -
    - "Unauthorised site entry is prohibited"
    - Name and phone number of builder or other responsible person for contact outside working hours.

- 8** 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 the 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.

**Inspections required:**

- (a)** all steel reinforcement prior to the pouring of concrete;
- (b)** completion of floor timbers and/or placing of damp proof course material;
- (c)** completion of wall and timber framing with any veneer walls completed prior to wall sheeting being fixed;
- (d)** completion of wall and roof framing prior to wall sheeting being fixed
- (e)** wet floor area and wall surfacing prior to tiling

**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.

- 9** Submission of an application to Council pursuant to Section 68 of the Local Government Act 1993 for the following, prior to issue of a Construction Certificate:-

- a Installing, constructing or altering a waste treatment device or human waste storage facility or a drain connected to any such device or facility.
- 10 Approval is subject to the condition that the builder or person who does the residential building work complies with the applicable requirements of Part 6 of the Home building Act 1989 whereby a person must not contract to do any residential building work unless a contract of insurance that complies with this Act is in force in relation to the proposed work. It is the responsibility of the builder or person who is to do the work to satisfy Council that they have complied with the applicable requirements of Part 6.

Details are to be submitted to Council prior to work commencing.

- 11 Before work commences, the Council must be informed in writing of the name and contractor licence number of the licensee who has been contracted to do or intends to do the work.
- 12 All excavation and backfilling are to be executed safely and in accordance with appropriate professional standards, and are to be properly guarded and protected to prevent them from being dangerous to life or property.
- 13 Compliance with the Building Code of Australia.
- All building work must be carried out in accordance with the requirements of the (BCA).
- A construction certificate shall not be issued until the Principal Certifying Authority (PCA) is satisfied that the plans and specifications comply with the BCA.
- 14 The proposed dwelling is to have a minimum floor level of 4.7 metres AHD in accordance with Council's Flood Risk Management Policy.
- 15 A minimum of 10,000 litres of water is to be provided for fire fighting purposes. The storage may be a separate rainwater storage tank, dams or swimming pool. Details to be provided prior to release of the Construction Certificate.
- 16 An additional 38mm female outlet incorporating a 38mm gate valve is to be provided to all domestic water storage tanks. The additional outlet is to be conveniently located for fire fighting purposes, prior to occupation of the premises.

- 17 Under the provisions of AS 3959-1999 – Construction of Buildings in Bushfire Prone Areas, the site has been determined as a high risk category of bushfire attack requiring level 2 construction.
- 18 The owner is to maintain the asset protection zone comprising and outer protection area (OPA) and an inner protection area (IPA).

The OPA is to have a minimum depth of 10 metres. Fine fuel loads are to be kept to below 8 tonnes per hectare. In grasslands, fuel height is to be maintained below 10 centimetres.

The IPA is to have a minimum depth of 20 metres and satisfy the following performance criteria:

- (a) minimal fine fuel at ground level;
- (b) vegetation is not to provide a path to transfer the fire, i.e. the fuels are to be discontinuous.
- (c) trees and shrubs are permitted provided they do not touch or overhang the building, are spread out and do not form a continuous canopy, are species that do not produce large quantities of fuel, and are far enough away from the dwelling so that they cannot ignite the building.

Swamp mahoganies are to be retained within the OPA.

Clearing is to be limited to the APZ.

- 19 The bushfire threat reduction measures outlined in the Bushfire Hazard Assessment submitted with the application dated 3 May 2004 are to be incorporated over the life of the development.
- 20 The Management Plan for Bushfire Risk Reduction submitted with the application dated 3 May 2004 is to be incorporated over the life of the development.
- 21 Roofwaters are to be discharged 3 metres clear of the building with measures incorporated at the discharge point to prevent erosion.
- 22 Proof of activation of the Access Agreement with the Department of Environment and Conservation regarding access through Hat Head National Park is to be provided prior to release of the Construction Certificate.

- 23 While access is gained via McKays Access, the owner shall be responsible to maintain it to an all-weather standard.**
- 24 In the event access across Hat Head National Park is ever denied, the owner shall, within 30 days of cessation of the access agreement with the Department of Environment and Conservation:-**
- (a) Submit detailed engineering plans providing for the upgrading of the Crown Road from Fairweathers Lane to the subject land, suitable to permit two (2) wheel drive all weather access.**
  - (b) Upon receipt of Council's agreement, the road shall be constructed to the approved standard at no cost to Council.**