

DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

15th November 2005

DSDS11	PROPOSED SUBDIVISION – LOT 7 DP 104965 NO 122 LIKA DRIVE, EUROKA FILE: T6-05-416 AJC
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SUMMARY:

Reporting on a proposal to subdivide Rural Small Holdings zoned land at Lika Drive, Euroka.

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Applicant:	Mr P Smith
Owner:	Mr F J Hancock
Subject Property:	Lot 7 DP 104965 No 122 Lika Drive, Euroka
Zone:	1(d) Rural Investigation

History

The subject allotment was created by subdivision in June 1999.

Council approved a Dual Occupancy Development on the subject allotment on the 10th June 2003, with Occupation Certificate being issued in the 25th February 2004.

Proposal

The proposal is to subdivide Lot 7 DP 104965 into 2 rural residential allotments.

Proposed Lot 70 (existing dwelling) will have an area of 1 hectare and proposed Lot 71 an area of 1.04 hectares. A plan showing the subdivision proposal is appended to this report. [\(Appendix V\)](#)

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

The objectives of this zone are to provide sufficient land to meet demand for hobby farms as well as rural residential development and permit uses that are compatible with more intensive rural development.

Clause 16(1)(b) requires a minimum lot size of 1 hectare.

The original 1999 subdivision that created Lot 7 was designed to meet these objectives having regard for the physical restrictions of the site itself such as the effects from flooding, effluent disposal, slope etc. Hence the subdivision pattern adopted as shown at [\(Appendix W\)](#) with seven of the lots being significantly larger (ranging from 2 to 4.97 hectares) than the minimum allotment size of 1 hectare.

North Coast Regional Environmental Plan 1988

The proposal is consistent with relevant clauses of the REP.

Development Control Plan No 3 – River Meadows, South Kempsey

Development Control Plan No 3 requires maintenance of an acceptable ratio of lot frontage to lot depth. The proposal is for a battleaxe lot with a frontage of only 6.05 metres.

The DCP does not contemplate battleaxe lots, and appears to require acceptable frontages to ensure separation of dwelling houses in keeping with the rural residential character. The proposal will create a building envelope in a location that will be about 70 metres from the nearest dwelling house, which is considered acceptable.

Public Exhibition

The proposal was advertised in accordance with Council Policy from the 6th September to 20th September 2005. Four submissions (all marked confidential) were lodged with Council, all objecting to the creation of the one additional allotment. The issues are summarised in the accompanying table as follows: -

Objection

Planning Comment

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| 1 Three (3) residences on the same block is too many. Consider what will happen to this estate if more apply for future additional dual occupancy and subdivision. | 1 The provisions of KLEP 1987 and DCP 3 allow for dual occupancy development and generally subdivision of land where the area of the proposed lots are no less than one hectare in this 1(c) Rural Small Holdings Zone, subject to assessment. |
| 2 Land purchased because of its existing rural residential character. | 2 The proposal is considered to be consistent with the rural residential character. |
| 3 The original concept and integrity will be lost if the proposal is approved and will encourage others on this estate to follow this example. | 3 While there is potential for further subdivision, each application must be considered on merit. Minimum lot size and reasonable separation of dwelling-houses will be matters for consideration. |
| 4 The subdivision was designed to allow the maintenance of privacy from at least one aspect. The proposal will directly compromise at least 5 of the existing homes in the estate and would devalue aesthetically and financially these properties. The bathroom, kitchen, lounge, dining and master bedroom will be adversely affected by the new access corridor. | 4 The nearest dwelling is over 80 metres away from the proposed dwelling envelope. The access handle is about 20m from the nearest dwelling. No significant impact is anticipated. |
| 5 The internal road was designed to support only 12 houses. | 5 Currently DCP 36 would allow a maximum of 50 dwellings to be served. The current number of lots served is 12 and the whole of existing Lika Drive serves 31 lots. It is possible for up to an additional 18 lots to be |

	subdivided off Lika Drive if similar developments such as this is approved, extending the number of lots served to 49 in total.
6 To ensure adequate space between dwellings a road frontage of 75metres was to be worked towards.	6 A minimum separation of 80 metres will be achieved by the subdivision, which is considered reasonable.
7 Each lot have a minimum of one hectare of farmable land. The proposed lot intrudes on the wetlands and is in flood level which makes it unsuitable to sustain a hobby farm.	7 There is no requirement for rural-residential lots to contain farming activities.
8 The flood level contour lines vary from the original plans which were used to create the original subdivision. This would reduce the suitable land on which the new owners would be able to build and during times of flood the new residents would not be able to gain access to their property.	8 A check of the plan of application and the approved development plan for the original subdivision show that there is a discrepancy with the numbering of the contours. This means there is more area above the assessed 1 in 100 year flood level.
9 The environmental issue of septic tank runoff seeping into the natural wetland environment in the low lying area of the property.	9 The proposal complies with the buffer distances set down in <i>Environment Health and Protection Guidelines Onsite Sewage Management for Single Household 1998</i> . The Midcoast Environmental Services Onsite Sewage Management Assessment concludes that an Aerated Wastewater Treatment System with Surface or Subsurface irrigation is suitable for this development

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| 10 If Council approves this development proposal we the original developers may seek compensation for not allowing us to develop the blocks in such a manner in the first instance. | proposal.
10 The original developers of this site complied with the provisions of Development Control Plan No 3 and the objectives contained for this zone in Kempsey Local Environmental Plan 1987. This proposal if approved may set a precedent that will result in DCP 3 requiring review. |
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REPORT IMPLICATIONS:

- ***Environmental***

The proposed development will not generate any adverse environmental impacts although there may be cumulative impacts if similar developments are allowed.

- ***Social***

There is potential for further similar development to occur. It is recommended that DCP No 3 be reviewed to ensure issues of separation of dwelling-houses is enforceable to protect the rural residential character of the area.

- ***Economic (Financial)***

There is potential for future similar proposals within the catchment of road and water supply infrastructure. The financial implications of this may be future upgrading of road and water infrastructure, with Council not being able to recoup the full cost.

RECOMMENDATION:

A That the application be approved 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 Plan No 3600 dated 22

August 2005 and as modified by any conditions of this consent.

- 2 Two days prior to commencing work 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
- 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 Submission of appropriate restrictions as to user, to be placed over the title of the proposed allotments binding successive owners, allowing for provision of the following:
 - (a) Council will not approve a dwelling on proposed allotment 71 unless an Aerated Waste Water Treatment System, with pressurised subsurface irrigation disposal area is installed in accordance with AS/NZ 1547-2000. Details are to accompany any application to construct a dwelling on the proposed Lot 71.
 - (b) Council will not approve a dwellings on proposed lot 71 unless a separate Sewage Management Assessment prepared by a suitably qualified consultant having had regard to the recommendation of the Onsite Sewage Management Assessment prepared by Midcoast Environmental Services 11/7/05 and the requirements contained in AS/NZ 1547-2000 certifying that the proposed dwelling has been sited having taken into account development specific features, is to accompany any application to construct a dwelling on proposed lot 71.

- (c) The future dwelling on proposed lot 1 is to be located above the assessed 1 in 100 year flood level of 11.03m AHD.
- (d) The Aerated Waste Water Treatment System and irrigation area is to be located above the assessed 1 in 20 year flood level for this locality.

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 and/or extinguish the restriction.

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 - (a) Creation of a nominated building envelope on proposed Lot 21 to ensure any future dwelling-house and associated bushfire Asset Protection Zone of 20 metres is contained entirely within the lot, or if the APZ affects proposed Lot 70, creation of an appropriate easement to ensure provision of the Asset Protection Zone.
 - (b) The creation of a suitable positive covenant over the title of proposed lots 71 in this development binding successive owners to maintain the nominated Bushfire Asset Protection Zone of 20 metres from the western boundary of the new lot.

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 and/or extinguish the restriction.

- 6 Submission of an appropriate restriction as to user to be placed over the title of proposed allotments 70 and 71, allowing for inclusion of the following:
 - (a) Retention of all existing large mature trees that have habitat values.

- (b) All boundary fencing in this stage of the development is to be of materials that will allow the free movement of mammals, i.e. plain wire no barbed wire or netting on lower wires.

The restriction is to be clearly identified on the plan of subdivision. Council is to be nominated as the sole party to vary, modify and or extinguish the restriction.

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

- 7 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.
- 8 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

- 9 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.
- 10 The applicant is to make satisfactory arrangements with CountryEnergy for the supply of electricity to each lot. A letter from CountryEnergy stating that satisfactory arrangements have been made for the provision of electricity supply to this development is to be lodged with Council prior to release of the linen plan.

- 11 Any necessary alterations to or relocations of public utility services to be carried out at no cost to Council.

CONTRIBUTIONS

- 12 Submission of an application for a Certificate of Compliance pursuant to Section 305 of the Water Management Act 2000 and the lodgment 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 $\$1,256 \times 1 \text{ E.T} = \$1,256$ (Indexed 2005/2006), prior to the issue of the Subdivision Certificate.
 - (b) Payment of a contribution towards Water Supply Headworks at the rate of \$3,563 per equivalent tenement, i.e $\$3,563 \times 1 \text{ E.T} = \$3,563$. (Indexed 2005/2006).
- 14 The applicant is to pay a contribution towards the 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 \times 1 \text{ E.T} = \403 . (Indexed 2005/2006).
- 15 The applicant is to pay a contribution towards arterial road upgrading (Gowings Hill Road) for each additional building entitlement created. The

contribution to be paid will be the rate prevailing at the time of having the plan of subdivision released. The current rate is \$1,958 per additional building entitlement created, i.e. $\$1,958 \times 1 \text{ E.T} = \$1,958$. (Indexed 2005/2006)

- 16 The applicant is to pay a contribution towards Lika Drive upgrading for each additional building entitlement created. The contribution to be paid will be the rate prevailing at the time of having the plan of subdivision released. The current rate is \$1,399 per additional building entitlement created, i.e. $\$1,399 \times 1 \text{ E.T} = \$1,399$. (Indexed 2005/2006)

INFORMATION TO BE SUBMITTED WITH THE CONSTRUCTION CERTIFICATE

- 17 The proposed access corridor is to be of sufficient width to allow construction from Lika Drive to the proposed building zone.
- 18 Detailed Engineering Plans allowing for the construction of the proposed access corridor are to be submitted to Council for approval. The access corridor is to be constructed to the following standard: -

A 3 metre wide reinforced concrete pavement on a 4 metre wide formation, with suitable rural type drainage which does not obstruct the natural flow of stormwater nor redirect and or concentrate storm flows onto neighbouring allotments and landscaped to protect adjoining allotments, in strict compliance with Council's Development Control Plan No 36 Engineering Guidelines for Subdivision and Development.

- 19 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.

- 20 The applicant is to construct a functional vehicular access within the Lika Drive road reserve by providing an approved gravel pavement with bitumen sealed wearing surface(single coat 14mm flush seal) and or reinforced concrete pavement from the boundary to the existing edge of bitumen i.e. provision rural type access in accordance with Council's Standard for Private vehicular access to rural roads.

Applicant is to consult Council's Environmental Services Department for details prior to lodging the application for Construction Certificate.

- 21 The hours of operation of the activity are to be confined to 7.00am to 6pm, Mondays to Fridays, and 7.00am to 12noon Saturdays.
- 22 No trees to be lopped or removed except in accordance with Council's Policy on Tree Preservation, and with the written consent of Council.

INSPECTIONS

- 23 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.

B That no further subdivision be approved within the River Meadows Estate until a review of DCP has been undertaken to address issues of character, amenity and servicing for roads and water supply.

C That the objectors be advised accordingly.

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R B Pitt
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES