

DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

15th November 2005

**DSDS2 RE-SUBDIVISION – MARIA RIVER ROAD,
CRESCENT HEAD
FILE: T6-01-501 TJN**

SUMMARY:

Reporting that Council has received an application to modify a consent by deletion of conditions requiring the payment of contributions relating to a proposed resubdivision.

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Applicant: Crotty, Ussher, Marchment, Metcalf and Lewis
Subject Property: Lot 3 DP 115124, Lots 21, 22 and 28
DP 754441 126 Maria River Road,
Crescent Head
Zone: 1(a1) "Rural A1 Zone"

Description of Proposal

The proposed re-subdivision will create two additional dwelling entitlements. As part of the development consent, granted 12th December 2003, the following contributions were payable:-

Condition 9 \$7,209 per additional dwelling entitlement
created for the upgrading and maintenance of
Maria River Road

Condition 10 \$386 per additional dwelling entitlement
created for the provision of Open Space.

The applicant has since challenged the need to pay these contributions on the basis that there are two existing approved dwellings on the subject lots, meaning that no further dwelling entitlements are being created. Statutory declarations have been provided by the owners stating that the dwellings were erected following Council approval in 1974. By way of written submission the applicants have requested Council to:-

- 1 Recognise that the existing dwellings on the proposed lots are Council approved.
- 2 Delete consent conditions 9 and 10 as no new building entitlement is sought or required.

Planning Comment

The issue of whether contributions are payable is contingent on the applicant proving that the dwellings were legally erected. As previously stated, the owners have provided statutory declarations stating that the dwellings were erected in 1974. Under the provisions of the Macleay Interim Development Order Number 1 development approval was required to erect the dwellings on the subject land since 8 August, 1969. A search of Council's Development Application registers failed to identify any approvals for the two dwellings.

The issue of whether or not Council approval was granted in a question of fact that should be able to be confirmed by Council's development application and consent registers, or by the presentation by the owner of the letter of consent. Council cannot reasonably rely on a Statutory Declaration, particularly when the application and consent registers are available for inspection. There is no record of an application or a consent for the 2 dwellings, and it must be considered that they are unauthorised. Consequently, contributions are payable as a condition of consent.

Contribution Rate

In reviewing the application, a review of the level of road contributions payable has been undertaken. The previous calculation appears to contain a number of errors, the main error being a significant under estimation of the number of potential additional dwellings in Maria River Road in the future. Consequently the contribution calculation is significantly reduced to \$2,408 per dwelling.

REPORT IMPLICATIONS:

- ***Environmental***

There are no environmental implications in relation to modifying the consent.

- ***Social***

There are no social implications for modifying the consent.

- ***Economic (Financial)***

Deletion of the conditions for payment of the contribution will have a financial impact on Council through loss of income for road improvements and maintenance. If Council were to delete the condition from this consent, this would severely restrict Council's ability to impose similar conditions for other applications for approval of rural dwellings.

- ***Policy or Statutory***

Council Policy requires the imposition of contributions towards roads and open space. There are no known reasons to justify waiving these contributions.

RECOMMENDATION:

- 1** That the applicant be advised that Council does not recognise the existing dwelling-houses as being Council approved.
- 2** That Development Consent T6-01-50 be amended by substituting in Condition 9 a contribution rate of \$2.408 per additional dwelling.