



KEMPSEY
Shire Council

DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

10th October 2006

**DSDS2 SUBDIVISION OF LOTS B AND C, DP399906
 OFF CROADS ESPLANADE, SMITHTOWN
 FILE: T6-05-117 AJC { Folio No. * }**

This report should be read in conjunction with Confidential Report DSDS1.

SUMMARY:

Reporting on an application to review a determination made by Council.

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Applicant: Mr Ralph and Mrs Sonia Walker
Subject Property: Lots B & C DP 399906, Nos. 2 & 4 Croads
 Esplanade, Smithtown
Owners: R & S Walker and M & S Rodwell
Zone: 2(v) Village

At the Council meeting on the 12th September 2006 Council resolved:

"That this matter be deferred to the next meeting to allow for a further report from the Director Sustainable Development Services which shall include consideration of consent conditions".

Background

An application to excise one additional lot from Lots B&C DP399906, Nos. 2 & 4 Croads Esplanade, Smithtown was lodged with Council on the 14 March 2005. A [plan showing the subdivision proposal](#) is attached to this report. [\(Appendix D\)](#)

The application was reported to Council on 9 August 2005. Council resolved to list the application for a Works Inspection and requested

draft conditions of approval be submitted to the next meeting of Council.

Draft development conditions were submitted to Council on 13 September 2005. Council resolved to note the information pending the Works Inspection.

The Works Committee inspected the site on the 20 September 2005.

The application was subsequently refused at the meeting of 11 October 2005 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 No 1 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."*

Kempsey Local Environmental Plan 1987

Clause 12 provides that Council must not consent to the subdivision of land within Zone 2(v) unless Council is satisfied that:

- a. The land is outside the limit of the 1 in 100 year flood, and is not subject to an unacceptable risk from localised flooding during a 1 in 20 year storm event, or
- b. the allotment includes not less than 500m² of land outside the limit of the 1 in 100 year flood and not subject to unacceptable risk from localised flooding during a 1 in 20 year storm event.

Clause 21 provides that Council shall grant consent to the placement of fill on any land unless it is satisfied that it will not have an adverse environmental impact.

Proposal

The land owner seeks a Review of the Determination of the 11 October 2005 under Section 82A of the Environmental Planning and Assessment Act 1979.

Issues for Review

A copy of the submission is attached [\(Appendix E\)](#) in support of this review. The issues in the submission are:

Submission	Planning Comment
<p>1 <i>The owner states he is a member of the State Emergency Services and has had 25 years experience in rescue and evacuation. In his opinion the proposal would not place any additional load on Emergency Services for the following reasons:</i></p> <p><i>The subject property is the highest part of Smithtown;</i></p> <p><i>It has direct access to Smithtown/ Gladstone Bridge (if evacuation is required);</i></p> <p><i>It is the only land in the village suitable for this type of subdivision</i></p>	<p>1 Concern is raised in relation to the cumulative impact in Smithtown of allowing similar types of development to occur. The original Council report highlighted that there existed a potential for subdivision of this nature of up to 65 additional lots in Smithtown. This would increase the population in the village by approximately 29%.</p>
<p>2 <i>The Council report states that the proposed development will not have any adverse environmental impacts.</i></p>	<p>2 The impacts relate to flood planning, which are predominately social and economic issues.</p>
<p>3 <i>Council has not addressed the intent of filling the land for the new lot.</i></p>	<p>3 The report that went to Council in August 2005 stated, "The applicant has stated a preference for not filling the proposed Lot 3 but is prepared, if required, to fill 500 square metres of proposed lot 3 to the 1 in 100 Year Flood Level".</p>

4 *Council's Reason "A" for refusing the application is flawed because the new allotment once filled will have an area of 500m² above the assessed 1 in 100 year flood level and therefore comply with Clause 12(1)(c) of KLEP 1987. The existing dwellings have floor levels above the assessed 1 in 100 year flood. Therefore the SEPP 1 Objection relates to the existing lots containing the existing dwellings.*

4 The clause requires "each lot to include at least 500m² outside the limit of the 1 in 100 year flood." Even if the new house lot is filled to be above the 1 in 100 year level, it will not be outside the limit of the 1 in 100 year flood. It would be isolated during such an event. In addition, the 2 lots that will contain the existing dwelling-houses will not comply with clause 12, as the lots will not contain 500m² either above or outside the 1 in 100 year flood limit.

The report also noted "Any proposal by the applicant to fill the proposed additional allotment is to be accompanied by a Flood Impact Assessment prepared by a recognised Consultant Engineer having expertise in this field and using a suitable hydraulic model, demonstrating that the filling when placed will not alter current flooding patterns, depth and velocity in the immediate locality nor obstruct local drainage".

Council could not comment on the environmental effects of having filled proposed new lot 3 because there was no Flood Impact assessment provided by the applicant.

Reason A for refusal indicates the development standard that prevents the development. This reason for refusal could be overcome by a valid SEPP 1 objection (based on legal advice Council has previously received that this clause was a

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| <p>5 <i>The SEPP 1 objection relates to the 2 lots containing the existing dwellings. The proposed new lot will comply with clause 12. Therefore, there is no need for a SEPP 1 objection to create the new lot.</i></p> | <p>5 development standard). Reason B addresses the SEPP 1 objection. Reason "B" is that the objection has not demonstrated that the standard is unreasonable or unnecessary in the circumstances.</p> |
| <p>6 <i>The site is unique in Smithtown and will not set an undesirable precedent for the following reasons: -</i></p> <p style="padding-left: 40px;"><i>Pedestrian access is located at the rear boundary and is available for evacuation to Gladstone Bridge;</i></p> <p style="padding-left: 40px;"><i>The site is more elevated than other sites in Smithtown.</i></p> | <p>5 As noted above, the clause requires "each lot to include at least 500m2 outside the limit of the 1 in 100 year flood." Even if the new house lot is filled to be above the 1 in 100 year level, it will not be outside the limit of the 1 in 100 year flood, as it would be isolated during such an event.</p> <p>6 The access to the ramp leading onto the Gladstone / Smithtown Bridge is close at hand. However, there will still be a need for all lot owners in the development to wade through floodwaters. Gladstone Bridge will also be isolated, meaning that any person that evacuates to the bridge is isolated for the period of inundation, and will likely need to be evacuated to emergency shelter in the likely inclement weather conditions, particularly involving persons in ill health, the very young and elderly residents.</p> |

There are existing lots in Park and Jeffrey Streets that have similar natural surface levels.

It is considered that there is no justification to alter Council's previous determination of refusal.

If Council are in mind to approve the applicant the following conditions should apply: -

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 \times 1 \text{ 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 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. $\$1,256 \times 1 \text{ E.T} = \$1,256$ 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 is required to 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. Council is required to ensure that a strategic approach is applied to management of the Lower Macleay Floodplain.

RECOMMENDATION:

That Council confirm its decision to refuse the application.

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R B Pitt
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES