



## DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

12<sup>th</sup> September 2006

<b>DSDS9</b>	<b>SUBDIVISION OF LOTS B AND C, DP399906 OFF CROADS ESPLANADE, SMITHTOWN FILE: T6-05-117 AJC</b>
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### SUMMARY:

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

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<b>Applicant:</b>	Mr Ralph and Mrs Sonia Walker
<b>Subject Property:</b>	LOTS B&C DP399906, Nos. 2 & 4 Croads Esplanade, Smithtown
<b>Owners:</b>	R & S Walker and M & S Rodwell
<b>Zone:</b>	2(v) Village

### 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 Q](#))

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 500m<sup>2</sup> 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 [\(Appendix R\)](#) in support of this review. The issues in the submission are:

1. *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:*
  - a. *The subject property is the highest part of Smithtown;*
  - b. *It has direct access to Smithtown/ Gladstone Bridge (if evacuation is required);*

- c. *It is the only land in the village suitable for this type of subdivision*

## **Planning Comment**

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%.

*The Council report states that the proposed development will not have any adverse environmental impacts.*

## **Planning Comment**

The impacts relate to flood planning, which are predominately social and economic issues.

1. *Council has not addressed the intent of filling the land for the new lot.*

## **Planning Comment**

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"*.

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.

1. *Council's Reason "A" for refusing the application is flawed because the new allotment once filled will have an area of 500m<sup>2</sup> 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.*

## **Planning Comment**

The clause requires "each lot to include at least 500m<sup>2</sup> 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 500m<sup>2</sup> either above or outside the 1 in 100 year flood limit.

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 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.

1. *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.*

## **Planning Comment**

As noted above, the clause requires "each lot to include at least 500m<sup>2</sup> 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.

1. *The site is unique in Smithtown and will not set an undesirable precedent for the following reasons: -*
  - (a) *Pedestrian access is located at the rear boundary and is available for evacuation to Gladstone Bridge;*
  - (b) *The site is more elevated than other sites in Smithtown.*

## **Planning Comment**

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.

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.

## ***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**