



KEMPSEY
Shire Council

DIRECTOR SUSTAINABLE DEVELOPMENT REPORT

12th December 2006

DSDS2	PROPOSED RURAL WORKERS DWELLING LOT 1 DP1067268 No 1026 GOWINGS HILL ROAD DONGDINGALONG FILE: T6-06-422 TJN {Folio No. *}
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SUMMARY:

Reporting that Council has received an application to erect a rural workers dwelling that is contrary to the Kempsey Local Environmental 1987.

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Applicant: DEX Consulting Pty Ltd
Subject Property: Lot 1 DP1067268 No 1026 Gowings Hill Road,
Dondingalong
Zone: 1(A3) Rural "A3" Agricultural Protection

Description of Proposal

The applicant proposes to erect a two (2) bedroom rural workers dwelling ([Appendix A](#)) on the lot.

Heads of Consideration

The proposal has been assessed in accordance with the relevant heads of consideration as identified by Section 79C of the Environmental Planning and Assessment Act 1979 with the following deemed to be of particular relevance.

State Environmental Planning Policies (SEPP's)

There are no SEPP's directly applicable to the proposal.

Kempsey Local Environmental Plan 1987

Rural workers dwellings are permissible within the 1(a3) zone provided the requirements of Clause 17(4) of Kempsey Local Environmental Plan 1987 are met. This clause states:-

A person may, with the consent of the Council, erect one additional dwelling-house on the land within Zone No. 1(a3) having an area of not less than 40 hectares, if:-

- a) the Council is satisfied that the dwelling house will be used or occupied by a person engaged by the owner of that land in the pursuit of agriculture or aquaculture on that land or on land adjacent to or adjoining that land;

- b) the needs of existing agriculture or aquaculture genuinely require that the person referred to in paragraph (a) reside on the site; and
- c) the land on which the dwelling-house is intended to be erected is consolidated with the land on which the first dwelling-house is erected.

Whilst the land has an area greater than 40 hectares (53.19 hectares), and the owner may be willing to engage a rural worker to reside in the rural workers dwelling, Council needs to be satisfied that the needs of existing agriculture genuinely require that a worker reside on site.

The applicant has made a submission ([Appendix B](#)) justifying the need for a worker to reside on site. This includes the following: -

- Currently running 24 Angus cows and calves on the property and plan to increase this number in the future to 50/60.
- Planning to develop a vineyard to provide grapes to the Sherwood Estate Winery.
- Conducting feasibility into the commercial viability of growing olives for sale.

Additional information has also been provided regarding the duties that rural workers would undertake, this includes: -

- Provide full time animal husbandry services to stock
- Replace, upgrade and maintain cattle yards and fences
- Construct new dams
- Develop breeding program
- Provide winter support
- Develop and maintain the orchard
- Develop proposals e.g. olives and grapes and implement proposals.

The applicant also contends that as he currently resides in Sydney, it is not possible for him to spend the necessary time at the property to oversee, plan and manage the proposed property improvements, stock and crops. A rural workers dwelling would allow for a committed individual to manage the property during the absence.

Planning Comment

While it is possible that a property fully developed in accordance with the plans put forward by the applicant would require a rural workers dwelling on site, the term "existing agriculture" contained within Kempsey Local Environmental Plan 1987 is of particular relevance when assessing the application. Council therefore cannot take into account proposed future agricultural activities (eg the vineyard, olive grove and increased stocking rate), with a decision to be based upon what currently exists on site. Presently, the only agricultural activities undertaken on the subject lot is the grazing of 24 head of Angus cattle which it is considered is not sufficient to warrant a manager to reside on site in addition to the primary residents.

The applicant has suggested that as he does not reside on site due to the requirements of his employment in Sydney, a rural workers dwelling is warranted to enable a person to be on site at all times to undertake care and maintenance of the cattle ([Appendix C](#)). However, the personal

circumstances of the property owner is not a relevant Head of Consideration as identified by Section 79C(1) of the Environmental Planning and Assessment Act 1979 Council therefore is obliged to assess the application for the rural workers dwelling based on the assumption that the residents of the primary residence permanently reside on site and are able to actively contribute to farm management.

The applicant has also requested that this report be presented to the Council meeting without a recommendation from staff. Council staff, have an obligation to make available all possible information to enable Councillors to make an informed decision, this includes a recommendation made by qualified staff based on solid planning principles.

If the applicant wishes to place a rural workers dwelling on site it would be necessary to put in place all of the proposed property improvements and demonstrate to Council that based on this increased agricultural capacity that a rural worker is required to genuinely reside on site. However, at this stage, under the requirements of the current Kempsey Local Environmental Plan 1987 Council is not able to grant consent to the proposal.

Relevant Planning Policies

A second dwelling as dual occupancy is able to be placed on the property in accordance with Clause 31 of Kempsey Local Environmental Plan 1987 provided it is no greater than 5m from the existing dwelling and with a floor area of not more than 90m² and attached to the existing dwelling.

REPORT IMPLICATIONS:

- ***Environmental***

Nil

- ***Social***

The proposal could possibly provide for an increase in farm productivity, and generate additional employment.

- ***Economic (Financial)***

Increased farm productivity could increase the economic potential of the shire.

- ***Policy or Statutory***

The proposal is contrary to Clause 17(4) of the Kempsey Local Environmental Plan 1987 in that the applicant has not demonstrated that the needs of the existing agriculture genuinely require that a worker reside on site.

RECOMMENDATION:

- A. That the applicant be invited to amend the application to provide for a second dwelling within 5 metres and attached to the primary residence and with a floor area of no greater than 90m² in accordance with Clause 31 of the KLEP 1987.

- B. That in the event the applicant does not wish to pursue a dual occupancy development, that they be invited to withdraw the application.

- C. That in the event neither option A or B is accepted within fourteen (14) days of notice being given that the proposal be refused for the following reasons.
 - 1. The proposal is contrary to Clause 17(4) of Kempsey Local Environmental Plan 1987.

 - 2. The applicant has not demonstrated that the needs of the existing agriculture genuinely require a rural worker reside on site.

 - 3. Approval of the application would create an undesirable precedent for similar proposals within Kempsey Shire Council.

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R B Pitt
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES