

DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

13 June 2006

DSDS15	APPEAL BY C J MOBBS: PROPOSED DWELLING GRASS TREE ROAD, SOUTH KEMPSEY FILE: T6-05-182 APB
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SUMMARY:

Reporting on the Court Decision in relation to the appeal against Council's refusal to a development application for a dwelling house within the investigation area for the South Kempsey Industrial Area.

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Applicant: C Mobbs
Subject Property: Lot 151 DP 752417 Sandy Creek Road,
South Kempsey
Zone: 1(d) Rural Investigation

History

Council considered an application for the dwelling-house at its meeting of 15 November 2006, following a number of attempts to negotiate an alternative location for the house on the land. Council refused the application for the following reasons:

- 1 Proposed location of the dwelling is contrary to the objectives of the 1(d) zoning of the land.
- 2 The subject land is within the proposed investigation area for the provision of industrial land to serve the needs of Kempsey Shire's population.
- 3 Approval of the dwelling would render a substantial area of potential future industrial land unable to be used for such a purpose due to the need to separate industrial development from dwelling-houses.
- 4 Approval of the dwelling-house is likely to prevent the economic development of adjoining land for a broad range of industrial land uses.

The applicant lodged an appeal with the Land and Environment Court against Council's refusal.

The matter was heard by Commissioner Stafford Watts on 19 May 2006. Council commissioned a noise expert to prepare a specialist report, and Council's planning manager prepared a joint expert report with Mr R van Iersel who was appointed by Mr Mobbs as a planning expert.

Court Decision

The court upheld the appeal based on a number of reasons, as follows:

- 1 The proposed dwelling could be incorporated into future industrial development on the land.
- 2 Industrial development on the adjoining land can provide the necessary acoustic buffer by way of design of buildings or distance.
- 3 There was no certainty of rezoning of the land for industrial purposes, and may be many years before it was developed, so little weight could be given to this in determining the application.
- 4 If the land was rezoned then the land would be redeveloped due to the greatly increased value of the land, resulting in discontinuation of the use of the house.

In approving the house, the Commissioner attached 2 additional conditions that specify that in the event that the subject land or its eastern half is rezoned industrial then the owner will not be considered a "sensitive noise receiver" for the purpose of an application for development of any industry on the adjoining land. A restriction on the title of the land is required to inform future owners of this restriction.

Comments

The impact of this approval on the future of the proposed industrial zone is to render a substantial part of the adjoining land unviable for development for noisy industrial activities. It will be necessary to review the viability of proceeding with the investigation of the area for industrial development.

REPORT IMPLICATIONS:

- ***Environmental***

Nil

- ***Social***

Nil

- *Economic (Financial)*

The decision may result in the inability for portion of the adjoining land to be developed for industrial purposes.

- *Policy or Statutory*

Nil

RECOMMENDATION

That a review of the proposed industrial area be undertaken having regard to the approved dwelling house, and whether or not further funds should be expended in further investigation of this area.

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R B Pitt
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES