



KEMPSEY
Shire Council

**DIRECTOR CORPORATE AND COMMUNITY SERVICES
SUPPLEMENTARY REPORT**

8th May 2007

**DCCS15 ASSIGNMENT OF LEASE
SUPP FILE: LA12889 GBS {Folio No. *}**

SUMMARY:

Reporting on a proposal to assign the lease of a Council owned property at the rear of the West Kempsey Sewerage Treatment Works.

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DESCRIPTION:

In 1994 Council purchased two lots of land at the rear of the West Kempsey Sewage Treatment Plant to facilitate the expansion of effluent management systems and installation of a re-use irrigation system.

Part of the negotiations for purchase of the land was for Council to agree to lease the portion of the land, which would be surplus to its operational needs back to the vendor. The land is currently under a 20 year grazing lease at nominal rental as per that agreement.

On 15th July 2004 Council consented to the assignment of the lease to another party (Shannon Pacific Pty Ltd and Thomas).

Whilst this assignment was not formalised in the usual manner that is by way of a Deed of Assignment (executed by all 3 parties), the lack of such a Deed may not be a condition precedent to a valid assignment. Whether such assignment has or has not taken place is not relevant to Council's consent.

The Assignee's are now requesting Council's permission to assign the lease to another party. The Lessee, under the conditions of the lease, must have Council's approval to do this, but Council's consent shall not be withheld "in the case of a reasonable, responsible and respectable assignee".

The proposed assignment is to Mr Gary Alan Ferguson, a Chartered Accountant and Senior Partner of Wrights Chartered Accountants of Smith Street, Kempsey. No change in use of the land is proposed.

It appears that Council would be obliged to consent to the assignment if it felt Mr Ferguson was a "reasonable, responsible and respectable assignee".

REPORT IMPLICATIONS:

- *Environmental*

Nil

- *Social*

Nil

- *Economic (Financial)*

Nil

- *Policy or Statutory*

Nil

- *Director's Review*

The proposed assignees will be made aware of the purpose of the lease i.e. "grazing of livestock", and that Council's consent is required for any change of purpose.

The Lessee also has the option of extending the lease for a further period of ten (10) years on the same terms (and rental) as the current lease. If this right is exercised it would extend the lease to 2024.

RECOMMENDATION:

1. That Council consent to the assignment of the lease of Portion of Lots 32/33, DP752349, Parish Yarravel, subject to the preparation and execution of a Deed of Assignment satisfactory to Council.
2. That the assignees attention be drawn to:-
 - a) the lease is of part only of the lands.
 - b) the requirement to obtain Council's consent as landlord for any usage of the land other than "grazing of livestock".
3. That Council's seal be affixed to any documents relating to the assignments of the lease of portion of Lots 32/33, DP752349, Parish of Yarravel.

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G B Snape
DIRECTOR CORPORATE AND COMMUNITY SERVICES