



## DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

3<sup>rd</sup> February 2009

**DSDS6                      PROPOSED SUBDIVISION OF 2 LOTS INTO 3**  
**FILE: T6-07-358      KJA                      {Folio No. \*}**

### SUMMARY:

Reporting that Council has received an application to subdivide 2 lots into 3 lots at Dulconghi Heights for which objections have been received.

### SECTION 375A OF LOCAL GOVERNMENT ACT REQUIRES THAT A DIVISION BE CALLED IN RESPECT TO THIS REPORT

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**Applicant:** Robert Dennis & Associates  
**Subject Property:** Lot 104 DP884312 Crescent Head Road, Crescent Head & Lot 372 DP1070288 Neville Morton Drive Crescent Head  
**Zone:** 1 (c) (Rural (Small Holdings 'C' Zone)) and 1(a) (Rural 'A1' Zone)

### DESCRIPTION:

The current proposal is to subdivide Lot 375 and Lot 104 into three (3) rural lots. Lot 1 - 95.74ha, Lot 2 - 48.99ha and Lot 3 - 92.26ha. The proposal includes building envelopes for Lots 1 and 2 which adjoin the northern edge of 'Dulconghi Heights' estate in Zone 1(c).

### Background

Development Consent S15-96-21 was granted in September 1996 to subdivide Lot 105 DP884312 into 44 Lots known as Dulconghi Heights. Condition nine (9) of this development consent required that a restriction as to user is to be applied to the areas identified in the plan of application No. 1340/96 as "Drainage Reserve / Wildlife Corridors". The terms of the restriction state that 'no building, dwelling or other structure shall be erected within the area designated as Area "A" on the plan of Subdivision' ([Appendix R – Page G268](#)).

### Heads of Consideration

The proposal has been examined having regard to the heads of consideration identified under Section 79C (1) of the *Environmental Planning and Assessment Act 1979* with the following matters considered to be of particular relevance to the proposal.

## **Kempsey Local Environment Plan 1987 (KLEP)**

### Clause 12 - Subdivision – flood prone land

Clause 12(1) provides that 'Council must not consent to the subdivision of land in 1(c) ... 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) *in the case of land within Zone 1(c), the allotments to be created by the subdivision each include no less than 1000m<sup>2</sup> of land which is outside the limit of the 1 in 100 year flood.*

The plans provided show that there is an area of at least 1000m<sup>2</sup> on each lot. However, the access for proposed Lot 1 would be affected by a 1 in 20 storm event. The applicant has provided a hydraulic assessment which estimates that a flow rate of 4.86m<sup>3</sup> of water per second will cross the access path where the two drainage corridors meet. To address this issue, it is recommended that a condition of consent be imposed requiring that prior to the issue of a subdivision certificate, detailed engineering plans are submitted demonstrating all weather access will be maintained during the designated 1 in 20 year storm event.

### Clause 51 – Development of Land at Dulconghi Mountain

Clause 51 (2) requires Council to:

- (a) *ensure that provision has been made for the identification of watercourses and drainage reserves and for the protection of vegetation within those reserves;*
- (b) *ensure that the abovementioned drainage reserves extend from the designated wetlands ...to the land within Zone No. 7(d), wherever possible;*

In relation to Lot 2 there is an obvious connection between the 7 (d) land to the north and the SEPP 14 wetlands to the east and south east for the passage of wildlife. Additionally there is existing vegetation that is to remain which is likely to support the passage of wildlife. In order to ensure the flow of water is unlikely to be reduced by the proposal, the access road will need to be designed having regard to the 1 in 20 year storm event (see clause 12-KLEP 1987)

However, proposed Lot 1 has never had a connection from the 7 (d) area to the north and the SEPP 14 area to the south and the vegetation is highly disturbed and of low quality. It is considered that the role of this area as a wildlife corridor is limited as there is little or no vegetation to provide shelter and there is no direct connection to the 7(d) land.

Clause 51(4) requires Council consent to cut down any tree. It is considered that construction of the access road may require removal of a number of melaleuca trees. The access is between 10 metres and 4.5 metres at its narrowest point and the applicant indicates that no trees will be removed.

## **Development Control Plan (DCP) 21 – Dulconghi Heights**

### *5.1 - Aboriginal Heritage*

Conditions of consent have been included to ensure that the requirements of the NP&W Act are met.

### *5.5 – Flood Affected Land*

The plans provided show that there is an area of at least 1000m<sup>2</sup> on each lot above the 1:100 year flood. However, the access of proposed Lot 1 would be affected by storm events and in a 1 in 20 storm event. A condition has been incorporated in the consent to address this issue. (see "Clause 12 - KLEP 1987")

### *5.7 – Flora and Fauna*

There are no significant areas of flora or fauna on the proposed lots shown on Figure Six of the DCP.

### *5.8 – Bushfire Hazard Reduction*

The application is Integrated Development under the *Rural Fires Act 1997*. The NSW Rural Fire Service has issued an Authority which has been incorporated as conditions of consent.

### *Clause 5.12 – Management of Residue Land*

'Further subdivision of the 1(a1) zoned land below the Rural-Residential area is not supported, particularly any form of subdivision which will result in lot boundaries and consequently fence lines, encroaching or crossing the designated wetland areas.'

The application is not proposing any new fence lines. The proposed boundary's follow existing fence lines only. The proposal will also consolidate the residue 7(d) land into one parcel being proposed Lot 3. Additionally a search of Council records show that the subject lots were identified as part of the residue Lot 100 in 1996 and were also identified as being able to provide flood free dwelling sites.

## **North Coast Regional Environmental Plan (NCREP)**

Clause 15 of NCREP requires Council to consider the affect the development has on coastal wetlands. In particular the impact on the quality or quantity flows of water to the wetland or habitat.

The use of the easement as an access road may affect the function of the drainage reserves and corridors. The two drainage reserves intersect at the location of the proposed access road which would be subject to extremely wet surfaces, and may potentially affect the quality and quantity of water accessing the SEPP 14 Coastal Wet Lands. A condition has been incorporated in the consent to address this issue.

## **Access**

Condition 9 of the original subdivision approval (S15-96-21) reads:

*'A restriction as to user is to be applied to the areas identified on the plan of application No.1340/96 as Drainage Reserve / Wildlife Corridors in accordance with the Section 88B of the Conveyance Act preventing building and or development. These areas are to remain as part of the proposed Lot 100 and not be identified on the linen plan as Drainage Reserves. The Kempsey Shire Council is to be named as the sole part on this instrument to vary, modify or relinquish...'*

In accordance with the condition a Restriction as User was placed on Lot 100 (parent parcel) for the preservation of a drainage and wildlife corridor which stated that:

*'No Building, Dwelling or other Structure shall be erected within the area designated as Area 'A' on the Plan of Subdivision.'*

Legal opinion was sought by Council in 2005 regarding the 88B Instrument as identified as 'A' on the Linen Plan for the original subdivision. The advice stated that a road or path would not meet the definition of 'other Structure' and therefore would not be prohibited by the Instrument. [\(Appendix S – Page G271\)](#)

Additionally, any culverts that may be required to establish an all weather access to the proposed parcels are likely to be located outside of the corridors as indicated as 'A' and therefore not affected by this restriction.

Access from Neville Morton Drive to proposed Lot 2 was formalised under the Development Consent (T6-04-619) for the purpose of a shed and stockyards issued in August 2005. Access to Lot 2 via 'A' can be achieved to allow all weather access as well as to accommodate wildlife passage from the 7(d) areas to the SEPP 14 wetlands and is unlikely to impede the flow of stormwater.

Alternatively, the applicant can apply to Council to remove the 88B instrument from the original subdivision in respect to the wildlife corridor. Any such application will require evidence to be provided from an environmental consultant in relation to the viability of the corridor.

## Public Exhibition

*The Environmental Planning and Assessment Act* and Council's Notification Policy do not require subdivision applications to be advertised.

Despite the application not being advertised seven (7) submissions were received from surrounding residents. The major concerns are noted below.

[\(Appendix T – Page G272, Part 2 – Page G277, Part 3 – Page G282, Part 4 – Page G287, Part 5 – Page G292\)](#)

Objection	Planning Comment
1 Access to proposed Lot 1 via drainage and wildlife corridor	1 As stated there is no restriction preventing a driveway access to Lot 1 and 2 via the drainage and wildlife corridor marked as 'A' on the plan.

2	There is no existing access to Lot 1 as stated in the application.	2	There is no evidence provided to support the claim of an existing access to proposed Lot 1.
3	Lack of Public Notification	3	Council's Public Notification Policy does not require the proposed development to be notified.
4	Fencing in SEPP 14 wetlands	4	The application does not propose any fencing within the SEPP 14 wetland as the proposed boundaries follow existing fence lines which should be reinforced in conditions of consent.
5	Preservation of drainage corridor	5	Conditions of consent will ensure that there will be no impediment to the flow of stormwater through to the SEPP 14 wetlands via the drainage corridors.
6	Flooding	6	Plans indicate that there is at least 1000m <sup>2</sup> on each lot above 3.75 AHD which complies with the Council's flood policy and KLEP 1987.

**RECOMMENDATION IMPLICATIONS:**

- ***Environmental***

***The proposed subdivision will not have an adverse impact on fauna and flora.***

- ***Social***

***Nil***

- ***Economic (Financial)***

***Nil***

- ***Policy or Statutory***

***Nil***

- ***Director's Review***

***As per report.***

**RECOMMENDATION:**

A. That the consent be granted subject to the following conditions:-

1. Development is to be in accordance with approved plans  
The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan No. / Supporting Document	Version	Prepared by	Dated
Site plan 0433/06 S01 & 02	2	Robert Dennis Associates	23 Oct 2007
Hydrological Assessment Plan D01	1	Robert Dennis Associates	16 Sept 2008

In the event of any inconsistency between conditions of this development consent and the plans / supporting documents referred to above, the conditions of this development consent prevail.

The approved plans and supporting documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

2. This consent does not permit commencement of any works  
This consent does not permit commencement of any works. Works are not to commence until such time as a Construction Certificate has been obtained and the appointment of a Principal Certifying Authority.

Required work	Specification of work
<i>Driveways Rural – unsealed roads</i>	All-weather driveways, in accordance with Council's rural driveway standards, from the edge of the road to 3 metres within the property boundary for each of the proposed new allotments.
<i>Driveway Internal – where 2wd access not available to building</i>	A three (3) metre wide all-weather driveway to the building site for proposed Lot(s) 1 & 2. The plans will include certification that the access construction will not have detrimental effects on the stormwater flow patterns or local flooding in the area.
Service Conduits	Service conduits to each of the proposed new allotments laid in strict accordance with the service authorities' requirements.
Culverts required across drainage channels or streams	Culvert to be designed to ensure that peak flow rates for the 1 in 20 year storm event are not affected. The applicant is to obtain any necessary approvals from the Department of Natural Resources and / or the Department of Primary Industries, Fisheries, and plans.

## THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE FOR SUBDIVISION WORKS

### 3. Engineering Construction Plans

Three (3) copies of engineering construction plans and specifications must accompany the construction certificate application. Such plans are to provide for the works in the following table in accordance with Council's current Design and Construction Manuals and Specifications.

### 4. Erosion and Sedimentation Control Plan

The plans and specifications to accompany the construction certificate application are to include a sediment and erosion control plan to indicate the measures to be employed to control erosion and loss of sediment from the site. The sediment and erosion control plan is to be designed in accordance with the requirements of the Landcom Blue Book, *Soils and Construction -Managing Urban Stormwater*.

The sediment and erosion control plan must be prepared by a suitably experienced person such as a person certified by:

- The Institution of Engineers, Australia, for engineering and hydrology matters.
- The International Erosion Control Association for soil conservation matters.
- The Australian Society of Soil Science for collection or analysis of soil data.

The plan must incorporate (without being limited to) information on general site management, material handling practices, soil stabilisation, water control, sediment control, wind erosion control and access measures.

## THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH PRIOR TO COMMENCEMENT OF SUBDIVISION WORKS

### 5. Written Notification

Written notification of intention to commence works must be forwarded to the Council seven (7) days prior to work commencing. Notification is to include contact details of the supervising engineer and site contractor.

### 6. Public Liability Insurance

The developer and / or contractor must produce evidence to the Principal Certifying Authority of public liability insurance cover for a minimum of \$10 million. Council is to be nominated as an interested party on the policy. The public liability insurance cover is to be

maintained for the duration of the period of the works and during any maintenance period.

7. Erosion & sediment measures in accordance with the approved Erosion and Sediment Control Plan  
Erosion and sedimentation controls are to be in place in accordance with the approved Erosion and Sediment Control Plan.

Note: Council may impose on-the-spot fines of up to \$600 for non-compliance with this condition.

#### THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH DURING CONSTRUCTION OF SUBDIVISION WORKS

8. Construction times  
Construction works must not unreasonably interfere with the amenity of the neighbourhood. In particular construction noise, when audible on residential premises, can only occur:
  - a) Monday to Friday, 7 am to 6 pm.
  - b) Saturday, 8 am to 1 pm.
  - c) No construction work to take place on Sundays or Public Holidays.
9. Construction noise  
Construction noise is to be limited as follows:
  - a) For construction periods of four (4) weeks and under, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 20 dB(A).
  - b) For construction periods greater than four (4) weeks and not exceeding twenty-six (26) weeks, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 10 dB(A).
10. Construction vibration  
Construction vibration is to be limited in accordance with:
  - (a) The NSW Roads and Traffic Authority Environmental Noise and Management Manual;
  - (b) EPA Environmental Noise Control Manual, Chapter 174, *Vibration in Buildings*; and
  - (c) Australian Standard AS 2670, *Evaluation of Human Exposure to Whole Body Vibration, Part 2: Continuous and Shock-Induced Vibration in Buildings (1 to 80 Hz)*.
11. Fencing to protect trees

Trees to be retained are to be protected by a fence so as to minimise disturbance to existing ground conditions within the drip line of the trees. The fence is to be constructed:

- a) with a minimum height of 1.2 metres,
- b) outside the drip line of the tree,
- c) of steel star pickets at a maximum distance of 2 metres between pickets,
- d) using a minimum of 3 strands of steel wire,
- e) to enclose the tree, and
- f) with orange barrier mesh, or similar, attached to the outside of the fence and continuing around its perimeter.

The fence is to be maintained for the duration of the site clearing, preparation and construction works.

**12. Care to be taken when placing services near trees**

All care is to be taken to manually excavate around or under any lateral structural support roots of any tree so as to minimise root disturbance where services are to be laid within the drip-line of a tree.

**13. No filling around trees**

No soil or fill material is to be placed within the drip line of a tree so as to cause changes in surface level by more than 50mm from the existing level and such soil is not to be compacted. Such soil / fill must be finer than that being covered in situ, *e.g. clay must not be placed over loam soil.*

**14. Inspection of Public Works**

Development works on public property are not to proceed past the following hold points without inspection and approval by Council. Notice of required inspection must be given 24 hours prior to inspection. You must quote your construction certificate number and property description to book your inspection.

- a) prior to commencement of site clearing and installation of erosion control facilities;
- b) at completion of installation of erosion control measures
- c) prior to installing traffic management works
- d) at completion of installation of traffic management works
- e) at the commencement of earthworks;
- f) before commencement of any filling works;
- g) when the sub-grade is exposed and prior to placing of pavement materials;
- h) when trenches are open, stormwater / water / sewer pipes and conduits jointed and prior to backfilling;
- i) at the completion of each pavement (sub base / base) layer;

- j) before pouring of concrete for kerb and guttering;
- k) prior to the pouring of concrete for sewerage works;
- l) prior to the pouring of concrete or paved foot paving works;
- m) on completion of road gravelling or pavement;
- n) during construction of sewer infrastructure;
- o) during construction of water infrastructure;
- p) prior to sealing and laying of pavement surface course.

All works at each hold point are to be certified as compliant, in accordance with Council's current Design and Construction Manuals and Specifications, prior to proceeding to the next hold point. Council will undertake random audit of work sites to verify compliance of public works as required.

**15. Responsibilities under the National Parks and Wildlife Act 1974**

All earthmoving contractors and operators must be instructed that, in the event of any bone, or stone artefacts, or discrete distributions of shell, being unearthed during earthmoving, work must cease immediately in the affected area, and the Local Aboriginal Land Council and officers of the National Parks and Wildlife Service, informed of the discovery. Work must not recommence until the material has been inspected by those officials and permission has been given to proceed. Those failing to report a discovery and those responsible for the damage or destruction occasioned by unauthorised removal or alteration to a site or to archaeological material may be prosecuted under the National Parks and Wildlife Act 1974.

**16. Maintenance of sediment and erosion control measures**  
Sediment and erosion control measures must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

**17. Public safety requirements**  
All care is to be taken to ensure the safety of the public in general, road users, pedestrians and adjoining property. Council is not held responsible for any negligence caused by the undertaking of the works.

**18. Council Specification**  
All works to be constructed to at least the minimum requirements of Council's Adopted Engineering Standard.

**19. Approved Plans to remain on site**  
A copy of the approved Construction Certificate including plans, details and specifications must remain at the site at all times during the construction of the subdivision.

**THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH PRIOR TO ISSUE OF A SUBDIVISION CERTIFICATE**

**20. Plan of Subdivision**  
 An application for a Subdivision Certificate must be made on the approved form. The Subdivision Certificate fees, in accordance with Council's adopted schedule of fees and charges, must accompany such application. Seven (7) copies of the plan of subdivision are to be submitted with the application for a subdivision certificate. The location of all buildings and / or other permanent improvements including fences and internal access driveways / roads must be indicated on 1 of the copies.

**21. Plan of Subdivision and Section 88B Instrument requirements**  
 A Section 88B Instrument and 1 copy are to be submitted with the application for a subdivision certificate. The final plan of subdivision and accompanying Section 88B Instrument are to provide for the items listed in the following table:

Item for inclusion in Plan of Subdivision and / or Section 88B Instrument	Details of Item
Dwelling Envelope	Restrictions to limit the erection of dwellings to the nominated dwelling envelope.

**22. Completion of All Works**  
 All roads, drainage and civil works, required by this development consent and associated Construction Certificate, are to be completed. Works are to include restoration, replacement and / or reconstruction of any damage caused to surrounding public infrastructure, including damage to road pavements along any haulage routes used for the construction of the subdivision.

**23. Electricity Supply Certificate**  
 Written evidence from an electricity supply authority is to be submitted with the application for a subdivision certificate stating that satisfactory arrangements have been made for the provision of underground electricity supply throughout the subdivision.

**24. Telephone Supply Certificate**  
 Written evidence from Telstra is to be submitted with the application for a subdivision certificate stating that satisfactory arrangements have been made for the provision of underground telephone supply throughout the subdivision.

**25. Contributions for Water and Sewer Services prior to this issue of a Subdivision Certificate.**  
 Contributions set out in the following table are to be paid to Council prior to the issue of a Construction Certificate.

Contributions are levied in accordance with Council's Kempsey Shire Council Macleay Water DSP for Water & DSP Sewage Services dated July 2006. The Plans may be viewed during office hours at Council's Offices.

The contributions payable will be adjusted in accordance with relevant plan and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment. Payments will only be accepted by cash or bank cheque

The Certificate of Compliance under Section 306 of the Water Management Act 2000, identifying payment of the contributions, is to be provided to the Principal Certifying Authority.

Public service	No. of Equivalent Tenements	Contribution Rate (Amount per ET)	Contribution Levied	Date until which Contribution rate is applicable
Water	1 ET	\$7,947	\$7,947	30 <sup>th</sup> June 2008 / 09
<b>TOTAL</b>			<b>\$7,947</b>	

26. Contribution to be paid towards provision or improvement of amenities or services prior to the issue of a Subdivision Certificate.

The particulars of the contributions levied pursuant to Section 94 of the Act are set out in the following table:

The specific public amenity or service in respect of which the condition is imposed.	The contributions plan under which the condition is imposed	Date of contributions plan
Outdoor Recreation	Outdoor recreation -2001	September 2000
Rural Roads	Rural Roads Developer	May 2000
Section 94 – Project Administration	Project Administration	10 August 2007

The above plans may be viewed during office hours at the Council Customer First Centre located at 22 Tozer Street West Kempsey.

Contributions set out in the following Schedule are to be paid to Council prior to the issue of a Construction Certificate. The following contributions are current at the date of this consent. The contributions payable will be

Public amenity or service	Unit type	No. of Units	Contribution Rate (Amount per Unit)	Contribution Levied	Date until which Contribution rate is applicable
Outdoor Recreation	ET	1	\$449.00	\$449.00	30 <sup>th</sup> June 2008 / 09
Arterials Road	ET	1	\$1,074.00	\$1,074.00	30 <sup>th</sup> June 2008 / 09
<b>Subtotal</b>				<b>\$1,523.00</b>	
<b>S94 Administration</b>	6% of total Section 94 charge applicable			<b>\$91.40</b>	30 <sup>th</sup> June 2008 / 09
<b>TOTAL</b>				<b>\$1,614.40</b>	

adjusted in accordance with the relevant plan and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment. The contribution rates for specific dates are available from Council offices during office hours. Payments will only be accepted by cash or bank cheque.

Schedule of Contributions pursuant to Section 94 of the Environmental Planning and Assessment Act 1979.

- 27. **Integrated Rural Bushfire Service**  
The development proposal is to comply with the subdivision layout identified on the drawing prepared by Robert Dennis and Associates Pty Ltd, project number 0433/06 dated 28/8/2007.
- 28. The plan of subdivision is to indicate that the boundaries traversing the SEPP14 wetland have been set by following the existing fence-lines.
- 29. The plans for the required construction certificate are to include detailed engineering plans for the required internal access road to the approved dwelling envelope to 2WD all weather standard. Such plans shall indicate that the road has been designed so as not to impede the flow of stormwater during a 1 in 20 year storm event in accordance with "Australian Rainfall and Runoff".

B. That the objectors be advised of Council's decision.

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**R B Pitt**  
**DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES**