



## **DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT**

13 October 2009

<b>DSDS6</b>	<b>SECTION 64 CHARGES – PROPOSED DWELLING, FREDERICKTON FILE: T6-09-204 CC: 287 KJW {Folio No. *}</b>
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### **SUMMARY:**

Reporting that council has received an application for a dwelling that requires payment of contribution towards water and sewage headworks to which the applicant has objected.

### **SECTION 375A OF LOCAL GOVERNMENT ACT, 1993 REQUIRES THAT A DIVISION BE CALLED IN RESPECT TO THIS REPORT**

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**Applicant:** C & A McCabe  
**Subject Property:** LA18560 Lot 49 DP83235  
148 Macleay Street Frederickton  
**Zone:** 2(v) (Village or Township)

### **BACKGROUND:**

On 16 July 2009 council auctioned a number of allotments, including 148 Macleay Street Frederickton.

148 Macleay Street Frederickton was previously provided to council to satisfy open space requirements for the Cyrus Saul Circuit subdivision. In creating an allotment for open space, no certificate of compliance was required and therefore no contributions were paid.

In November 2008, Amendment No. 99 to the Kempsey Local Environmental Plan (KLEP) was gazetted to reclassify the allotment from community land to operation land and to remove the status of reserve.

The purchaser of 148 Macleay Street Frederickton has submitted an application for a new four (4) bedroom dwelling. The applicant has been advised that in accordance with council's Developer Servicing Plans (DSP), a condition of the approval will require the applicant to obtain a certificate of compliance. The applicant has been advised that in order to obtain a certificate of compliance, payment of a contribution for water \$8,146 and for sewerage \$6,872 will be required.

The applicant has objected to the requirement to pay contribution to obtain a certificate of compliance which may be summarised as follows: -

- Appropriate searches were undertaken;
- Requirement to provide open space – resolved;
- Objecting to pay water and sewer contributions;
- Objecting to pay for sewer junction;
- Contributions and sewer junction were not advised to the purchaser at the time of sale or submitting development application.

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### **Developer Servicing Plans (DSPs) for Water Supply and Sewerage Services**

In 2006 Kempsey Shire Council prepared Development Servicing Plans (DSPs) for water supply and sewerage services in accordance with the developer charges guidelines for water supply, sewerage and stormwater (December 2002), issued by the former Department of Land and Water Conservation (DWLC) which were registered with the Department of Energy, Utilities, and Sustainability (DEUS). The developer charges adopted in the DSPs commenced on 1 July 2006.

Section 64 of the Local Government Act 1993 enables council to levy developer charges for water supply, sewerage and stormwater, derived from a cross-reference in that Act to section 306 of the Water Management Act 2000.

DSPs are documents which detail the sewerage and water supply developer charges to be levied on development areas utilising Council's sewerage and water supply infrastructure.

Developer charges are up-front charges levied to recover part of the infrastructure costs incurred in servicing new developments or additions/changes to existing developments. Developer charges serve two functions:

- They provide a source of funding for infrastructure required for new urban development.
- They provide signals regarding the cost of urban development and thus encourage less costly forms and areas of development.

There is no power under the EP&A Act for a council to impose a condition requiring a monetary contribution for water and sewerage services as a condition of development consent. However, council is able to impose a condition requiring application to be made to a water supply authority for a certificate of compliance for development carried out or proposed to be carried out. In granting a certificate, council can require payment of money and/or require work to be constructed.

Council has adopted a practice requiring developers applying to subdivide or develop to obtain a certificate of compliance where demand for water and sewerage will increase.

### **RECOMMENDATION IMPLICATIONS:**

- ***Environmental***

*Nil*

- **Social**

*Cost of providing infrastructure is shared across the community.*

- **Economic (Financial)**

*Payment of developer charges provides a source of funding for infrastructure.*

- **Policy or Statutory**

*Developers are required to comply with development servicing plans.*

**General Manager's Comment:**

*The developer servicing plans, which are the basis of this complaint, are on the council's internet and as such freely available. It is also noted that no mention is made of the type of enquiries made. The standard enquiries made when purchasing land, i.e. section n149 certificates, do not consider the future cost of developing the land, but instead only show the potential use of the land. This land was not "standard" land. It was in a council auction of surplus land and as such should warrant additional scrutiny as to the background of the land.*

*Council has had one of the purchasers of another lot come in and request not to complete the land for, among other reasons, the fact that subsequent to the auction the found out that the land was not zoned for the use he wished to use the land for.*

*If we are willing to waive the contributions for one purchaser, should we also waive the contributions for other matters that affect people who purchases land off council, such as this where, similarly the purchaser did not make the right enquiries? The waiving of the fees also sets a potential precedent, as other people who buy land which will require the contribution may request that the same benefits be transferred to that group.*

**RECOMMENDATION:**

1. **That the applicant be advised that in accordance with council's water and sewerage development service plans the requirement to obtain a certificate of compliance pursuant to the Water Management Act 2000 will need to be satisfied by the payment of a contribution of \$8,146 for water supply services and \$6,872 for sewage services.**
2. **That a report be provided to council in respect to consideration of adopting a policy to clarify the method for the implementing council's development servicing plans for water supply and sewerage services for different types of development.**

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