



**MINUTES OF THE WORKS INSPECTION COMMITTEE MEETING OF
KEMPSEY SHIRE COUNCIL**

Monday 29th June 2009 commencing at 2.44 p.m.

PRESENT:

Councillors J H Bowell (Mayor and Chairman), E A Campbell, E A Green,
J C Gribbin, D F Saul, A D Snowsill and J A Sproule

Acting General Manager, R B Pitt; Director Shire Services, B J Morris; Director
Sustainable Development Services, R B Pitt; Acting Director Corporate &
Community Services, K E Oliver; Manager Administration, K R Woods; and
Minute Taker D M Pearson.

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APOLOGY:

2009. WI 12

RESOLVED:

*Moved: Cl. Sproule
Seconded: Cl. Green*

That the apology submitted by Councillors Hayes and Walker for non-attendance at the meeting be accepted and leave of absence granted.

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DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

DSDS5	SECTION 82A REVIEW OF DETERMINATION
	FILE: T6-07-76 PJC {Folio No. 400762}

SUMMARY:

Reporting that additional information has been lodged for a section 82A Review of determination for the continued use of a dwelling at 154 Hughes Access, Collombatti.

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

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Applicant:

DEX Consulting Pty Ltd

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MAYOR – J H BOWELL

Subject Property: Lot 7 DP1004018, 154 Hughes Access, Collombatti
Zone: Zone No. 1(a3)(Rural "A3" Agricultural Protection Zone).

DESCRIPTION:

Council at its meeting of 7th April 2009 considered an application made under section 82A of the *Environmental Planning and Assessment Act 1979* to review the determination of Development Approval No. T6-07-76 for the continued use of a dwelling at 154 Hughes Access, Collombatti. The application requested the condition of consent requiring the payment of section 94 contributions be deleted from the consent on the basis that the dwelling either has an existing approval or enjoys existing use rights, Council made the following resolution:

"That this matter be deferred for one month to allow the applicant to prove existing use rights."

Council files were made available to the applicant who has lodged additional information through correspondence to Councillors dated 28th April 2009.

[\(Appendix E – Page G36\)](#)

To assist in understanding the history of development which has occurred over the subject lands plans have been prepared which provide details of dwelling and subdivision (boundary adjustment) approvals [\(Appendix F – Page G42\)](#)

1. DEVELOPMENT APPROVALS:

Issue 1:

The 1985 Topographic Mapping Series field version dates to 1984 and incorporates 1980 aerial photographic information.

Comment:

This statement is agreed.

Issue 2:

The 1985 Topographic Map shows 2 buildings on Lot 7 DP1004018 one on Lot 6 DP1004018 and no building on portion 21 or 22 (now lots 201 and 202 DP707918).

Comment:

Whilst two (2) buildings are indicated, neither building is on the location of the subject dwelling.

Issue 3:

Correspondence claims old dwelling located on Lot 7 DP1004018 was rebuilt in 1981.

Comment:

The 1969 Topographic Mapping Series 1:25000 using 1969 aerial photography and field information shows the only existing buildings on portion 7 and none on the remaining lots in the existing holding (Portions 20, 21 and lot 1). Even if the buildings were the original homestead they were not located in the location of the subject dwelling and another dwelling currently exists in the location indicated on the topographic map.

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MAYOR – J H BOWELL

Issue 4:

Timber dwelling completed 1986 by builder Noel Morley.

Comment:

No proof, or Statutory Declaration (with accompanying supporting information) has been provided and the applicant has been advised previously that DA approval was required since April 1981. If the dwelling was erected in 1986, no development consent was obtained as required.

Issue 5:

How can 2 dwellings be approved on Lot 202 DP707918 within one year?

Comment:

Only one dwelling approval was issued by Council specifically for Lot 202 DP707918. The 1981 approval was issued for the existing holding (Portion 7, 20 & 21) whilst the 1982 approval was issued solely for portion 20 now Lot 202 DP707918.

Issue 6:

Where are the dwellings on lot 202 DP707918 (previously portion 20), there is only one?

Comment:

Council has no record to confirm either commencement, and or completion of these dwellings nor has there been any information lodged by the applicant in support that council could act on. In any event this is not relevant of Council's considerations as the subject dwelling does not relate to Lot 202.

Issue 7:

The dwelling approved in 1984 was actually on former lot 7 and is the current dwelling of Mr Pratt.

Comment:

The 1984 development approval (1984 / 3) for a dwelling was for Portion 21 only (now lot 201 DP707918). The applicant owner was Harrison and the new owner since 2003 is Frederick. This application clearly relates to Lot 201 DP707918 and not Lot 7 DP1004018.

Issue 8:

There is an existing dwelling on lot 6 DP 1004018 (previously lot 1 DP190813).

Comment:

Council established on 14th March 1994 that there was an "existing use of a dwelling" constructed prior to 1969 on Lot 6 DP190813. Again this is not relevant to the subject dwelling.

Issue 9:

Council has a record of the approval for 3 dwellings plus original dwelling on Lot 1. The aerial photographs associated with topographic maps support this.

Comment:

Agreed, three (3) approvals for dwellings exist and are associated with portions 7, 20 and 21. However, approvals are associated with land parcel old portions 7, 20 and 21 (existing holding) whilst the remaining approvals are associated with single portions 20 and 21 only and do not relate to the site of the subject dwelling.

Issue 10:

If Council was concerned about the legality of the dwelling why not ask for details at subdivision stage.

Comment:

This application was for a boundary adjustment not an application to establish a dwelling entitlement.

Issue 11:

The applicant's Consultant states "that no new dwelling entitlement is being created in this case, as the dwelling exists and was approved in 1984."

Comment:

The development approval issued by Council in 1984 (1984 / 03) was to establish a dwelling on Lot 201 DP707918 (old portion 21) for a Mr Harrison. The current owner is Mr Frederick. There is no link between this 1984 application and the existing dwelling on Lot 7 DP1004018.

Conclusion:

It is apparent that Portion 7 now lot 7 DP1004018 has never had a dwelling entitlement nor has the applicant demonstrated that an existing use exists for the dwelling. Therefore S94 Rural Roads Contribution Plan and the Outdoor Recreation Contributions Plan apply.

2. SECTION 94 CONTRIBUTIONS

Issue 1:

No work maps, plans or work schedules appended to the contribution plan required by regulation 27(1[h]) including council costs of works and staging.

Comment:

The plan states at 1.4 that the plan applies to all rural development in the Shire. While a map is not included, it is reasonable to assume the meaning of the statement describes the contribution catchment area sufficiently.

Works schedules and maps are only intended to provide sufficient information on intended works. There is however no prescribed form these should take in either the Act or Regulation. Therefore if sufficient information is provided in other forms or methods, that information is valid.

The Court has also held that the development of detailed works schedules for rural roads is unnecessarily given the unpredictable nature of development in large rural shires. Research has indicated many Shires

are in a similar position to Kempsey with regard to a Rural Road CP, in that a detailed schedule of work is not available.

Issue 2:

Calculation re Collombatti Road and no calculation on Upper Collombatti Road.

Comment:

Calculations were provided for Collombatti Road from the Pacific Highway to Hughes Access. The 2001 calculations are from Pacific Highway to Wahroonga Place to Upper Collombatti Road then to Bilbo Place then in 2004 to Hughes Access.

Upper Collombatti Road is not in the calculation it is separate and not applicable to this development.

Issue 3:

The May 2000 Contribution Plan for Rural Roads is outdated.

Comment:

Council's Section 94 Planner is currently preparing a replacement Rural Roads Contribution Plan for 2009 release however the current CP sufficiently demonstrates the case to demand a contribution for road works, and clearly outlines the type of works to be undertaken (Section 3) and the process by which contributions are determined (section 4).

Issue 4:

How could a dwelling that has been in existence for 20 years now generate traffic and require road upgrading? Council should waive the contribution.

Comment:

The Land and Environment Court has consistent held that there is no power under the EP & A Act to issue a consent retrospectively. Therefore the consent relates to the continue use of the dwelling which must comply with current requirements. Council has the discretion not to charge in accordance with its CP, however it would be difficult to refuse requests to refund contributions paid by others in similar circumstances. This would also encourage people to erect dwellings illegally and Council would be creating an undesirable precedent.

RECOMMENDATION IMPLICATIONS:

- **Environmental**

Nil

- **Social**

Nil

- **Economic (Financial)**

Nil

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MAYOR – J H BOWELL

- *Policy or Statutory*

Nil

- *Director's Review*

As stated, the onus is on the applicant to establish existing use rights or that valid approval was granted.

- The applicant has failed to demonstrate that the dwelling enjoys existing use rights;
- No approval has been granted which authorised the dwelling; and,
- As consent is required which is retrospective, Council's policy requires payment of a road contribution.

2009. WI 13 RESOLVED:

*Moved: Cl. Green
Seconded: Cl. Campbell*

- A. That the application to review Development Consent No. T6-07-76 to delete condition no. 8 be declined.
- B. That condition of consent no. 8 of Development Consent No. T6-07-76 be varied to read as follows:

Contribution to be paid towards provision or improvement of amenities or services within three (3) months from the date of this determination.

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
Rural Roads	Rural Roads Developer	May 2000
Open Space	Section 94 Contribution for Outdoor Recreation	Sep 2001

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

The following contributions are current at the date of this consent. The contributions payable will be 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.

Public amenity service or	Unit type	No. of Units	Contribution Rate (Amount per Unit)	Contribution Levied	Date until which Contribution rate is applicable
Arterial Road (Collombatti Road)	ET	1	\$9,836	\$9,836.00	30.6.09
Catchment Access Road (Hughes Access)	ET	1	\$2542	\$2,542.00	20.6.09
Outdoor Recreation	ET	1	\$441	\$441.00	20.6.09
TOTAL				\$12,819.00	

C. That the applicant be advised that Council is prepared to consider further representations in respect a mutually agreeable schedule of payments to reduce the financial burden.

A Division on this decision resulted in the following votes.

F = Voted For
A = Voted Against

Bowell	F	Campbell	F	Green	F	Gribbin	F	Hayes	-	Saul	F	Snowsill	F
Sproule	F	Walker	-										

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CONCLUSION:

There being no further business, the Meeting terminated at 2.50 p.m.

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