

DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

14th December 2004

**DSDS7 PROPOSED ERECTION OF A TWO-STOREY
DWELLING – LOT 13 DP809844
UPPER BELMORE RIVER ROAD, GLADSTONE
FILE: T6-04-424 KJW**

SUMMARY:

Reporting that a request has been received in relation to Council's decision to require resiting a proposed dwelling at Belmore River.



Applicant: I & M Atkinson
Owner: I & M Atkinson
Subject Land: Lot 13 DP 809844 Upper Belmore River Road,
via Gladstone

History

The application was considered at Council's meeting on 9th November 2004 ([Appendix R - Part 1, Part 2, Part 3 and Part 4](#)) and it was resolved:-

"That this matter be referred back to the applicant for consideration of resiting the proposed dwelling."

In the letter to Mr & Mrs Atkinson advising them of Council's resolution it was also conferred:-

"As discussed at the above-mentioned meeting, re-positioning of the dwelling at the setback of around 50 metres from the southern boundary may be considered as more acceptable to Council."

In response to Council's letter Paul Stubbs Law Office have replied advising ([Appendix S](#)):-

"Our clients reject any proposal to erect their dwellings other than twenty (20) metres from the western boundary of their land."

In response, the following reasons (summarised) were given:-

- a) The land is flood prone and applicants want to build on the highest part.

Comment

Councils Flood Risk Management Policy Clause 6.3.2 (b) states that the dwelling is to be erected on the highest practical area within the parcel or lot.

Information [\(Appendix T\)](#) provided with the application identifies the ground level ranging from 2.35m to 2.49m, a variance of .140m across the front of the lot with no definite higher location.

- b) The objection received has been addressed by Councils Planning Officer.

Comment

Noted.

- c) Method for determining the application may be in breach of Clause 3(d) of Councils Public Notification Policy.

“Development applications that comply with all relevant Council Policies and statutory requirements will be approved under delegated authority, even where objections(s) are received, provided the relevant development control officer determines that no unacceptable impacts will result as a consequence of that development.”

In this particular case the application when first submitted identified the dwelling located only 10m from the south western boundary. The controls of DCP 22 are not applicable to this application as the land is zoned 1(a1) (Rural “A1” Zone) and as the lot is 22.1 ha in size there may have been impacts on the adjoining property.

The application was advertised in accordance with Councils Policy when first submitted with an objection received. During this time the application was amended with the dwelling being moved to 30m from the south western boundary with both neighbours agreeing. On the 16th September a letter was received from R and C Eakin withdrawing their consent to the agreed 30m setback and requesting their original objection to stay.

The applicant subsequently amended their application to 20m from the south western boundary which was the location considered at its meeting on 9th November 2004.

- d) Contravention of Section 89(2) of the Local Government Act.

Comment

Development Applications are considered under Clause 79C (1) of the EP & A Act Section 89(2) of the Local Government Act is the section to consider applications received under section 68 of the Local Government Act (septic, caravan parks, public entertainment etc).

Council has assessed the application under 79C(1) as stated in the report to Council on the 9th November 2004. ([Appendix R - Part 1, Part 2, Part 3 and Part 4](#))

- e) Twenty (20) week delay in processing the application which is causing stress.

Comment

The application was submitted to Council on 23rd July 2004. The application was referred to Council on the 9th November 2004. There was a delay in council staff endeavouring to seek an agreement between neighbours.

- f) Circumstances of the applicants current temporary accommodation.

Comment

Noted

Conclusion

The ([Appendix R - Part 1, Part 2, Part 3 and Part 4](#)) report to Council on 9th November 2004 has provided an assessment under 79C(1) of the Environmental Planning and Assessment Act and comments on the objection submitted by R & L Eakin.

It is considered that the proposed new dwelling would result in no unacceptable impacts on adjoining property owners, and having considered all the relevant matters under Section 79C(1) of the Environmental Planning and Assessment Act, 1979. If Council are in the mind to refuse the applications then reasons for refusal will need to be given.

Report Implications

From information supplied to Council, it is not anticipated that there will be any adverse environmental impacts from the proposed new dwelling.

Social

The proposal will, for the period of construction, provide employment for local trades-people and others employed in the building industry.

Economic

The proposal is considered to provide an economic benefit for the period of construction.

Statutory or Policy

The applicant has been assessed under Section 79C(1) or the Environmental Planning and Assessment Act, 1979 and Development Control Plan 22 – Local Housing Strategy.

RECOMMENDATION

A That the Development Application T6-04-424 be approved with a setback of 20 metres from the south western boundary subject to the following conditions:

- 1 The development referred to in this application is to be carried out substantially in accordance with the approved development plans as modified by any conditions of this consent.**
- 2 This consent has been issued on the basis that Council has been appointed as the Principal Certifying Authority and Council has accepted the appointment and will be issuing the construction certificate.**
- 3 This consent does not permit commencement of any works. Works are not to commence until such time as a Construction Certificate has been obtained. A Construction Certificate may be obtained from Council upon application being made or from an accredited certifier.**
- 4 Two days prior to commencing work Form 7 under Environmental Planning and Assessment Act Regulations, Notice of Commencement of Building or Subdivision work and Appointment of Principal Certifying Authority is to be submitted to Council.**
- 5 The dwelling is not to be occupied prior to the issue of an Occupation/Interim Occupation Certificate by Council.**
An application for a certificate is enclosed. It is requested that it be completed and returned to Council prior to requesting an inspection. A minimum of 48 hours notice is necessary when requesting the inspection. Appointments will be made in accordance with the inspection program for that area.
- 6 The building is not to be occupied until all conditions of Council's consent have been complied with and an**

Occupation Certificate has been obtained from Council or an accredited certifier and submitted to Council.

- 7 Approval is subject to the condition that the builder or person who does the residential building work complies with the applicable requirements of Part 6 of the Home building Act 1989 whereby a person must not contract to do any residential building work unless a contract of insurance that complies with this Act is in force in relation to the proposed work. It is the responsibility of the builder or person who is to do the work to satisfy Council that they have complied with the applicable requirements of Part 6.

Details are to be submitted to Council prior to work commencing.

- 8 Before work commences, the Council must be informed in writing of the name and contractor licence number of the licensee who has been contracted to do or intends to do the work

- 9 A sign is to be provided in a prominent and visible position (on the building or fence) stating "Unauthorised entry to the site is not permitted", together with the name of the person responsible for the site and a contact number outside working hours

- 10 A builder's toilet complying with Clause 78I of the Environmental Planning and Assessment Regulation, and connected directly to the sewer is required on site throughout the entire building operation.

Note: Clause 78 I requires that the toilet must be provided before any work is commenced.

- 11 All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Your attention is drawn to the following requirements of the Building Code of Australia.

- a Structural Engineer's Details for retaining walls, reinforced concrete slab & structural work is to be submitted prior to any work commencing on the building.
- b Protection is to be provided from subterranean termites. Council's Code of Practice outlines methods which may be used. Details of the

proposed method or methods are to be submitted for approval prior to commencement of work and suitable certifications are to be submitted prior to the issue of an occupation certificate.

- c That the floor surface of the wet areas are properly graded and drained and the junctions of the floor with the walls are treated to prevent the penetration of moisture into the walls. An inspection of the treated area is to be arranged with Council or suitable certification is to be submitted prior to the issue of an occupation certificate.
- d The windows and glass installations within the building shall comply with AS 1288, Part 3.6 BCA Housing Provisions and AS2047. The applicant shall furnish Council with a report from the supplier upon completion of the window and glass installation indicating compliance with the requirements of AS1288 and AS2047.
- e Should the verandah, patio or landing exceed 1 metre in height above the ground then a suitable balustrade is to be provided to the verandah, patio or landing and steps for safety and convenience.

Such balustrade to conform with the requirements of the Building Code of Australia:-

- (1) D2.16
- (2) Part 3.9.1 and 3.9.2 of BCA Housing Provisions

Note: Spacing of rails not to exceed 125mm.

- f Riser and Going dimensions for stairs shall be in accordance with Clause D2.13 of the Building Code of Australia. In Class 1 and 10 buildings the following will apply:

| Riser(R) | | Going (G) | | Quantity (2R + G) | |
|----------|-----|-----------|-----|-------------------|-----|
| max | min | max | min | max | min |
| 190 | 115 | 355 | 240 | 700 | 550 |

Note: Any openings between treads not to exceed 125mm.

- g Details of roof trusses, tie down and roof bracing are to be submitted prior to commencement of any building work on the site.

- h** Details of wall bracing to be carried out in accordance with Australian Standard 1684-1999 are to be submitted to Council prior to commencement of work.
- i** Kitchen exhaust fans are to be ducted externally of the building or a recirculating hood type be provided.
- j** **Class 1(a) and 1(b) Buildings**

An automatic fire detection and alarm system is to be installed in the building. Such system to conform with Specification E1.7 of the Building Code of Australia or be a smoke alarm system complying with AS 3786 or listed in the SSL Register of Accredited Products.

The system is to be provided with mains electrical power, have a stand by power supply and installed in each storey to comply with Clause E1.7 (N.S.W. Variation). Details of location of the units are to be provided for approval prior to installation.
- k** The walls immediately adjacent or behind a bath, basin, sink or trough, shall be finished to a height of not less than 300mm above the fixture or in the case of a shower, to a height of 1.8 metres above the floor with cement render ceramic tiles or other approved finish impervious to water.
- l** The door to all fully enclosed sanitary compartments must open outwards, or slide, or be readily removable from the outside, in accordance with the requirements of the Building Code of Australia.
- m** Any sarking used in the roof of the dwelling must have a flammability index not more than 5.
- n** Earth works must comply with Part 3.1.1 of the Building Code of Australia (Housing Provisions).
- o** Drainage of the site must comply with Part 3.1.2 of the Building Code of Australia (Housing Provisions).

- p A Survey Report is to be submitted on completion of slab formwork to ensure the location of the building is in accordance with the approval issued.
- 12 The dwelling shall be constructed to include all of the energy efficiency requirements contained within the single residence scorecard provided.
- 13 Building materials are not to be stored within the road reserve or any other public place.
- 14 Excavated material from the site is not to be placed within the road reserve or any other public place.
- 15 A Survey Certificate is to be submitted upon completion of the first floor frame to ensure that the finished floor level is at or above 4.74m metres A.H.D.
- 16 Construction of a vehicular access from the road formation to the property boundary in accordance with Council's Standard for Access to Rural Properties. Applicant is to consult Mr Tony Castle of Council's Environmental Services Department for requirements before commencing construction.
- 17 Roofwaters are to be discharged 3 metres clear of the building with measures incorporated at the discharge point to prevent erosion.
- 18 No trees to be lopped or removed except in accordance with Council's Policy on Tree Preservation, and with the written consent of Council.
- 19 Runoff and soil erosion controls shall be installed in accordance with the approved Erosion Control prior to work commencing on the site. The controls shall incorporate:-
- a diversion of uncontaminated upsite runoff around cleared and/or disturbed areas and areas to be cleared and/or disturbed.
 - b sediment control fences at the downslope perimeter of the cleared and/or disturbed area to prevent unwanted sediment and other debris escaping from the land.
 - c maintenance of all erosion control measures at maximum operational capacity until the land is

effectively rehabilitated and stabilised beyond the completion of construction.

Protection of any kerb inlet pit located downstream of the site in accordance with Council's Engineering Guidelines for subdivision and development (drawing No SW20).

Note:

- i Any roof drainage system is to be connected to the required discharged point at the building frame inspection stage.
- ii Any material spilled or deposited on the road reserve or in the gutter is to be removed immediately.

20 The applicant is to pay a contribution towards upgrading/maintenance of Upper Belmore Road and Right Bank road for dwellings on lots for which contributions have not been previously paid in accordance with Council's Section 94 Plan for Rural Roads. The contribution is to be paid prior to occupation of the dwelling or within thirty (30) days of this consent being issued whichever occurs first. The current rate is \$7,373.75 per lot/dwelling (Indexed 2004/2005).

A copy of Council's Section 94 may be inspected at Council's offices, corner Elbow and Tozer Streets, West Kempsey.

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

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R B Pitt
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES