



MINUTES OF THE ORDINARY MEETING OF KEMPSEY SHIRE COUNCIL

Tuesday 24th June 2003 commencing at 9.08a.m.

PRESENT:

Councillors J A C Hayes, (Mayor and Chairman), J H Howell, R J Bowen, T Hunt, P J Parkinson, B R Sowter and J Sproule.

General Manager, A V Burgess; Director Engineering, K J Finnie; Director Environmental Services, B W Casselden; Director Business Enterprises, G B Snape; Director Corporate and Community Services, T I Hannam; Pat Hanrahan and Donna Pearson.



APOLOGY:

2003. P1

RESOLVED:

*Moved: Cl. Hunt
Seconded: Cl. Sowter*

That the apology submitted by Councillor N Joukhadar for non-attendance at the meeting be accepted and leave of absence granted.



PUBLIC FORUM

- 1 - Mr Chris Nelson addressed Council regarding DA at Fisherman's Reach DES1 - Request To Modify Consent.



CONSIDERATION OF REPORTS RELATING TO PUBLIC FORUM – Reports DES1 Request to modify consent - Fisherman's Reach page G1



DES1

**REQUEST TO MODIFY CONSENT -
FISHERMANS REACH
FILE: T6-02-203 RBP**

{Folio No. 255803}

THIS IS PAGE 1 OF THE FULL TEXT MINUTES OF THE PLANNING MEETING OF THE KEMPSEY SHIRE COUNCIL HELD ON TUESDAY 24TH JUNE 2003.

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MAYOR

SUMMARY:

Reporting that Council has received a request to modify conditions of consent relating to the upgrading and maintenance of an access road for a rural industry at Fishermans Reach.



Subject Land: Lot 11 DP 622904 Serrata Lane, Fishermans Reach
Applicant: C and S Nelson
Proposed Development: Formalise Existing Rural Industry

Background

In March 2002, Council became aware that the subject land was being used for the purposes of a rural industry being the packaging of avocados grown in the Fishermans Reach district.

The applicant was advised of the need to submit a development application which was submitted on the 23rd April 2002. Having regard for non-compliance of the building with the fire safety requirements of the Building Code of Australia, the applicant was required to provide details of measures proposed to comply including information relating to traffic and chemical storage.

Based on the information provided relating to traffic generation which includes use of Serrata Lane by semi-trailers, small trucks, vans and cars, conditions were imposed requiring the maintenance and upgrading of Serrata Lane and a contribution towards maintenance of Fishermans Reach Road. The applicants are now seeking release of their Construction Certificate. Whilst they are agreeable to a payment of contribution towards Fishermans Reach Road, the applicants are objecting to the requirement to upgrade and maintain Serrata Lane.

Condition 16 states:

“Detailed engineering plans are to be submitted providing for the upgrading construction of Serrata Lane from Fishermans Reach Road to the proposed development prepared in consultation with Council. Such plans are to indicate pavement depths and drainage structures having regard to intended loadings with all works to be carried out in accordance with such plans, as endorsed by, Council prior to release of the required Construction Certificate.”

Condition 17 states:

“The owner of the subject land is to enter into a Deed of Agreement with Council to maintain Serrata Lane from the development to the intersection of Fishermans Reach Road prior to occupying the premises. Such agreement to be registered as a suitable covenant on the title of the subject land in form which binds successive owners to the agreement whilst ever the packaging of produce operates on the land.”

THIS IS PAGE 2 OF THE FULL TEXT MINUTES OF THE PLANNING MEETING OF THE KEMPSEY SHIRE COUNCIL HELD ON TUESDAY 24TH JUNE 2003.

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MAYOR

Applicants Submission

The applicant has submitted that condition 16 and 17 of the development consent are unreasonable for the following reasons:*(Appendix A)*

- 1 Serrata Lane was constructed by the previous owners of the land in the 1970s but has not been maintained by Council. The road has been maintained by the applicant for the past 20 years with no contribution from Council or neighbouring owners.
- 2 The packing shed operation has been set up primarily to pack own produce. The additional traffic due to the commercial packaging operation is approximately only 14% of total truck movements. The decision to pack fruit for growers in other areas means the packing season can be extended from 4 to 11 months of the year.
- 3 Serrata Park Holiday Park are a major user of the first 300 metres of the road and have never complied with development application by having permanent residents.
- 4 Guri Wa Farm Development uses the road. A farm and house development on Lot 6243 also uses the road.
- 5 The land to the north has potential for further subdivision. If Tolsons farm was sold off Barnetts access would be via Serrata Lane.

Planning Comment

- 1 Whether or not avocados packaged in the facility are grown on site, the development is defined as a "rural industry" and is permissible only with development consent. This, in part, reflects potential impacts associated with such developments including transportation by heavy vehicles. The accessing of other properties occurs at far less intensity and does not require development consent from Council.
- 2 Based on the information provided by the applicant, the development generates traffic including semi-trailers, small trucks, vans and cars. The unauthorised use of the premises for such purpose to date has resulted in considerable degradation to the pavement of Serrata Lane.
- 3 It should be noted that although Serrata Lane is dedicated to Council, Council has never maintained the road. The applicants agree that the road needs upgrading as it has a minimal gravel pavement over a sand base which has suffered severe damage. An estimate of the works required to get the 1km length of road up to an acceptable standard is in the order of \$130,000 to \$150,000 depending on drainage structures required. The conditions were imposed as Council has insufficient resources to upgrade and maintain the road which services the applicants development and dwelling as well as adjoining agricultural land.
- 4 As the road is dedicated to Council, Council may be found liable for any loss or injuries caused by users to the road. Following recent land

THIS IS PAGE 3 OF THE FULL TEXT MINUTES OF THE PLANNING MEETING OF THE KEMPSEY SHIRE COUNCIL HELD ON TUESDAY 24TH JUNE 2003.

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MAYOR

mark court cases, Council may not be able to rely on the defence of insufficient resources to maintain the road.

5 The applicant agrees that the road is not up to a suitable standard to service a development and it has been suggested that they approach the Department of State and Regional Development to obtain funding. If the road cannot be upgraded to a safe and serviceable standard, it would suggest that the location is inappropriate for the development having regard to the lack of suitable road infrastructure.

6 The operators of Serrata Park are only responsible to maintain the first 40 metres from Fishermans Reach Road. In this regard, Council may be agreeable to amend Condition 17 with the applicant being responsible to upgrade the pavement from Fishermans Reach Road to the development to the required standard with maintenance to be restricted from the first access point to Serrata Park to the development. As it appears the Serrata Park development has not complied with conditions of consent, Council would need to pursue the proprietors of Serrata Park to bitumen seal the first 40 metres and maintain the intersection in accordance with conditions of consent for the tourist development and to remove unauthorised access points.

Note: It should be noted that a single loaded semi-trailer movement would generate equivalent standard axle loadings equivalent to ten times the axle loadings generated by the tourist development over a given period. This does not include other traffic generated by the development including cars, vans and light trucks.

7 In respect to other users of Serrata Lane, the farmhouse development referred to for Lot 6243 was refused by PlanningNSW and Council has no control over the operation of the Tolsons farm which, at this point, does not utilise Serrata Lane.

The applicant agrees that the road is not at a suitable standard for use by semi-trailers and that significant upgrading is required. The purpose of obtaining development consent is to ensure that all costs (both internal and external) associated with developments can be met. Unless the applicant is able to achieve alternative funding to upgrade the road, it is apparent that the location of the development is unsuitable for the proposed activity.

Note: Council should be aware that the conditions requiring upgrading and maintenance are the same as those which Council has consistently applied to other developments seeking to utilise roads not maintained by Council. Any concession may be relied upon by other existing and future developers in seeking to avoid the cost of providing suitable access with associated cost and liability implications for Council.

Director Environmental Services Recommendation:

That the applicant be advised that Council is prepared to amend Condition 17 as follows:-

THIS IS PAGE 4 OF THE FULL TEXT MINUTES OF THE PLANNING MEETING OF THE KEMPSEY SHIRE COUNCIL HELD ON TUESDAY 24TH JUNE 2003.

.....
MAYOR

“The owner of the subject land is to enter into a Deed of Agreement with Council to maintain Serrata Lane from the development to the first access point to Serrata Park prior to occupying the premises. Such agreement to be registered as a suitable covenant on the title of the subject land in form which binds successive owners to the agreement whilst ever the packaging of produce operates on the land”.

MOVED:

*Moved: Cl. Bowen
Seconded: Cl. Sowter*

1. That the issue of the road contributions be deferred until C & S Nelson have had the time to finalise their approach to the Department of State and Regional Development to obtain funding for the development.
2. In the event that the funding application is not successful that C & S Nelson be given the opportunity to negotiate a part contribution with Council on the basis of the future potential to derive contributions from subdivision or development from land on Serrata Lane.

An Amendment was MOVED:

*Moved: Cl. Parkinson
Seconded: Cl. Hunt*

That the Director Environmental Services Recommendation be adopted.

The AMENDMENT was PUT to the meeting and was LOST.

An AMENDMENT was MOVED:

*Moved: Cl. Bowell
Seconded: Cl. Sowter*

That this matter be listed for a Works Inspection on Tuesday 22nd July 2003.

2003.P2

The AMENDMENT was PUT to the MEETING and was CARRIED, became the MOTION and was CARRIED.



ADOPTION OF AGENDA ORDER OF BUSINESS

2003. P3

RESOLVED:

*Moved: Cl. Sowter
Seconded: Cl. Bowen*

That the Agenda Order of Business be adopted.



DES2

PLANNING WORKSHOP

FILE: T4-2 BWC (NRN)

{Folio No. 255937}

SUMMARY:

Reporting on attendance at a workshop, called by PlanningNSW to discuss a new planning system.



PlanningNSW conducted a workshop with staff from Councils from Taree to the Queensland border to discuss the new planning system. As Council is aware there was an intention to have a new planning system to be known as PlanFirst introduced in NSW. Initially a number of regions were to commence the process. The North Coast was to be in the first round of proposals with Mid North Coast to commence sometime later. The development process from a State level to local level was likely to take a number of years to complete. It would appear that with the recent changes to the NSW Government Departmental Structure and the Ministers to those Departments that there may also be some changes to the original concept. Possibly, with a sooner than later emphasis.

There will, of course be a cost in time and money to Council. PlanningNSW has established a levy payable on Development Applications valued at over \$50,000 that is to assist the Government and Councils in developing and making the new planning documents. It is also understood that the amount for assistance Local Government is currently in the vicinity of \$3 million.

The current thinking (Departmental) is that local plans will be amalgam of LEP's, DCP's, Master Plans etc and State and regional strategies and policies. These plans will have links and where possible integration to Council Social and Management Plans.

It is expected that in the near future the current Minister, Craig Knowles, will make an announcement as to the direction and presumably time scale for the commencement of a new planning system.

It is interesting to note that the term PlanFirst was not included in the dialogue at the workshop.

At *(Appendix B)* are copies of the outline of a likely new planning system.

2003. P4

RESOLVED:

*Moved: Cl. Bowell
Seconded: Cl. Hunt*

That the information be noted.

DES 3	BUILDING AND DEVELOPMENT	
	FILE: B9-2 BWC (NRN)	{Folio No. 255939}

SUMMARY:

Reporting that the following applications have been approved:

THIS IS PAGE 6 OF THE FULL TEXT MINUTES OF THE PLANNING MEETING OF THE KEMPSEY SHIRE COUNCIL HELD ON TUESDAY 24TH JUNE 2003.

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MAYOR

APPROVALS

Local Development (LD) *(Appendix C)*

Construction Certificates (CB) *(Appendix D)*

2003. P5

RESOLVED:

*Moved: Cl. Howell
Seconded: Cl. Sowter*

That the information be noted.



QUESTIONS WITHOUT NOTICE

Councillor J H Howell

Councillor Howell was advised:-

- 1 That the size of allotments was being considered as part of the South West Rocks Structure Plan DCP 22 Review.
- 2 That the Director Environmental Services was unaware of any submissions on the SWR Structure Plan being sent to Council as all such submissions were to be sent to the Consultants.
- 3 The locations of the three (3) subdivisions at South West Rocks the subject of recent media discussions.

Councillor B R Sowter

Councillor Sowter was advised:-

- 1 That the decision to hold a separate Planning Committee meeting each month was made by Council and a rescission motion would be required to alter the arrangement.



MOTION FOR COMMITTEE

2003.P6

RESOLVED:

*Moved: Cl. Sproule
Seconded: Cl. Hunt*

That Council form itself into the Committee of the Whole, and at this stage the meeting be closed to the public to permit discussion of the confidential business items listed for the reasons as stated in the Agenda.



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MAYOR

DES1

**UNAUTHORISED VEHICLE REPAIR SHOP
KEMPSEY
FILE: T6-03-280 RBP**

{Folio No. 255940}

SUMMARY:

Reporting that Council has received an application to formalise an unauthorised vehicle repair work shop for which a significant contribution towards the provision of carparking is required.

REASON FOR PRESENTATION OF REPORT ON A CONFIDENTIAL BASIS

This report is considered on a confidential basis as it contains information that would if disclosed, prejudice the maintenance of law (Local Government Act 1993, Section 10A(2) (e)).



2003. P7

RECOMMENDED:

*Moved: Cl. Howell
Seconded: Cl. Hunt*

A. That consent be granted 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 Payment of a cash contribution in lieu of the provision of twelve (12) on-site carparking spaces at the rate of \$5,644 per space (i.e. 12 x \$5,644 = \$67,728 indexed 2002/03) prior to occupation of the premises.**

A copy of Council's Section 94 Plan for Off-Street Carparking may be inspected at Council's offices, cnr Tozer and Elbow Streets, West Kempsey.

- 3 Submission of an application(s) to Council pursuant to Section 68 of the Local Government Act 1993 for the following, prior to the issue of a Construction Certificate:-**
 - a. Disposing of waste into a sewer of the Council.**

You are advised that all works are to be undertaken in accordance with the Waste Management Strategy prepared by ERM Pty Ltd dated 8th April 2003.

B. That the applicant be advised that having regard for the unauthorised nature of the development, that all conditions are

THIS IS PAGE 8 OF THE FULL TEXT MINUTES OF THE PLANNING MEETING OF THE KEMPSEY SHIRE COUNCIL HELD ON TUESDAY 24TH JUNE 2003.

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MAYOR

required to be complied with within thirty (30) days of the date of consent.



REPORT OF THE MEETING OF THE COMMITTEE OF THE WHOLE

Upon resumption of Open Council, the following Report of the Committee of the Whole was submitted by the General Manager.



ADOPTION OF REPORT OF THE COMMITTEE OF THE WHOLE

2003.P8

RESOLVED:

*Moved: Cl. Howell
Seconded: Cl. Hunt*

That the foregoing recommendations of the Committee of the Whole, as reported by the General Manager, be adopted.



CONCLUSION:

There being no further business, the Meeting terminated at 9.58a.m.

