

## INTER-DIVISIONAL MEMO

---

**TO** : Administrator Boyd, Administrator Willan,  
Adminstrator Payne, Noel Hodges

**SUBJECT** : Development Application DA06/0627 - staged  
development for a rural land sharing community  
comprising 14 dwellings at Lot 1 DP 783885; Lot 6  
DP 614304, ; Cobaki Road Cobaki

**FILE** : DA06/0627

---

At Council's meeting of 29 May 2007, the abovementioned application was reviewed by Council's Administrators, whom resolved to defer the matter to allow further consideration.

In light of the above, I have reviewed the submissions provided at Council's meeting (Community Access) and provide the following comments in relation to the issues raised.

*Compliance with legislation and requirements of State Environmental Planning Policy No. 15 – Rural Landsharing Communities*

- a) There is no need to initiate a rezoning application to enable the development to proceed. The attached letter from Department of Planning requires a rezoning should a 'Community Title subdivision' be undertaken, this is not the case, subdivision is prohibited under the SEPP unless for a public purpose (i.e. road widening)
- b) The proposal is lodged over 2 lots, however the draft consent is established in a deferred commencement structure – allowing consolidation to take place prior the consent becoming active. This view is consistent with the letter provided by the Office of Frank Sartor dated 29 August 2006 – which requires the consolidation of the existing parcels prior to development proceeding.
- c) Whilst the proposal makes mention of a 'company', the proposal does not seek to create separate legal rights to parts of the land as the SEPP prohibits. The applicant has acknowledged that the land will be owned collectively and nothing within the documentation submitted appears to subdivide the lot in anyway. Should this be a significant point of concern, a condition of consent may be inserted as follows:

*'Separate legal rights to parts of the land title must not be created through any form of subdivision or other means such as agreements, dealings, company shares, trusts or time-sharing arrangements.'*

It is noted that draft Condition No. 3 already states that the development is to be carried out in accordance with the requirements of SEPP 15 as a fall back condition.

---

d) The applicant has detailed that all decisions made in relation to the property would be made by the registered proprietors (i.e. voting with all parties having equal voting power)

e) As detailed within the planning report, it is ultimately the decision of the landowner and market to establish pricing, however nothing contained within the management plan, nor approved plans is considered to result in 'low cost buildings' not being met. It should be acknowledged that bank loans and insurance are often difficult to obtain for such developments, a factor which is considered to significantly contribute to the ultimate sale price.

f) The reference to *'to create opportunities for an increase in the rural population in areas that are suffering or are likely to suffer from a decline in services due to rural population loss'* is an 'aim' of the policy, not a requirement. Accordingly, whilst the specific area may not be experiencing a population decline, this does not prohibit the development from occurring. In this regard, it is not considered that the proposal is in conflict with this objective and does not give rise to the refusal of the application.

g) The subject lands are not currently actively utilised for the pursuits of agriculture, nor are many of the land parcels located within the vicinity of the property. The subject land is predominately undulating, with significant elevation changes, with the flattest component of the property (and likely to be the most fertile) being the southern component of the property, following Cobaki Creek, this area does not include Home Improvement Areas. In addition, it was confirmed upon site inspection that the alternate flat areas of the property possess a reasonable number of surface and subsurface rocks, which would result in the viability of many agricultural pursuits in that area difficult. As detailed within my report, the density of housing within the proposal is not out of keeping with the surrounding locality and complies with the density stated within SEPP 15.

#### *Inaccuracies contained within the submitted Statement of Environmental Effects*

The proposal has been assessed thoroughly, many of the inaccuracies have not had a great deal of relevance to the assessment (i.e. length of ownership) and all other areas have been checked by site inspection, survey data and similar forms of assessment.

It is worth noting that an objector highlights that as *'shareholders cannot borrow against this type of property so their ability to finance quality housing may well be compromised'* however the objector earlier claimed that the proposal did not satisfy the SEPP by providing not low cost housing.

#### *Boundary Fencing*

In light of the concerns raised, it is considered appropriate that boundary fencing is to be provided by the applicant, and solely at their costs. This requirement appears within Section 26 of the *Dividing Fences Act 1991*. It is suggested that a condition be imposed as follows:

*'A boundary fence is to be provided around the site to such a standard to withstand occasional interference by adjoining cattle.'*

### Dog Baiting/Dog Ownership

Upon review of the submission and discussions with the objector, it is clear that this point of concern is largely not a landuse issue but rather a citing issue.

The objector has stated that baiting for wild dogs cannot occur within 500m of a residence.

As an example, should the current proposal not be pursued and the landowner apply for a single dwelling house application, the dog baiting issue would still be present should that dwelling be located within the vicinity of Home Improvement Areas 4 – 12 (a significant portion of the property).

In this regard it is worth noting that under Council's notification policy, that dwelling houses do not normally require notification within the 1(a) Rural zone and as such no submissions would be received regarding the application.

It is acknowledged that the subject land possesses an existing building 'pad' (of which the objector has informed is located outside the 500m buffer), however there appears to be no restrictions on either the DP or Section 88B instrument requiring any dwelling house be constructed in that specific location.

Accordingly, the existing dog baiting sterilises a significant portion of the subject land from possessing a single dwelling house, conversely, any dwelling, independent of number or density will result in dog baiting not being allowed.

It is noted that the objector has raised concerns regarding neighbours dogs, not just wild dogs, coming onto her property, and has raised concerns that the number of Home Improvement Areas will lead to this occurring more frequently. Whilst it is not a desirable outcome to create areas of conflict, the submitted application details that each Home Improvement Area is only allowed 1 medium sized dog, and that each Home Improvement Area shall be fully fenced. Accordingly, it is considered that appropriate provisions have been included to contain pet dogs on the subject land and that refusal of the application is not warranted on this issue. Any ongoing dog control matters are considered to be predominately a civil nature, not a town planning matter, however a condition of consent could be included stating as follows:

*'Each Home Improvement Area is to have a maximum of one (1) dog. Each Home Improvement Area is to be fully fenced to a suitable standard to contain the dog within the Home Improvement Area.'*

### Public Submissions

Public submissions have been addressed within the planning report prepared, concluding that the issues raised do not warrant refusal of the application.

### Bushfire

The application was reviewed by the NSW Rural Fire Service in accordance with Section 79BA of the Environmental Planning & Assessment Act 1979, whom provided

no objection subject to conditions of consent, which have been included within the planning report prepared.

### Rating Methods

Rating methods is not considered a valid reason for refusal against the heads of consideration under Section 79C of the EP & A Act 1979. Although, this matter may require review by Council the ensure future equity for similar land uses?

### Visual Impact

It is noted that two photo's were submitted to Community Access – it is assumed that these images were submitted to demonstrate the visual impact of the development. In this regard, many of the Home Improvement Areas are accompanied by landscape buffers and revegetation areas. Should additional screening be required, this could be undertaken by both the applicant and/or objectors to achieve their desired level of screening. A condition of consent could be included to read as follows to provide additional screening should this be seen as necessary:

*'Prior to the issue of a Construction Certificate for each stage of the development, a landscaping plan is to be submitted and approved by Tweed Shire Council's General Manager or their delegate. The submitted landscaping plan is to include a variety of mature species that are positioned and utilised to provide visual screening to adjoining properties and their residences'*

---