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TOWN PLANNING AND DEVELOPMENT CONSULTANTS
DEVELOPMENT INVESTIGATIONS & ENVIRONMENTAL STUDIES, DEVELOPMENT & SUBDIVISION APPLICATIONS,
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15 December 2008

General Manager
Wyong Shire Council
P O Box 20
Wyong, NSW 2259

ATTENTION: MARK GREER - DEVELOPMENT PLANER

Dear Sir,

RE: PROPOSED TWO LOT RURAL SUBDIVISION OF ATTACHED DUAL OCCUPANCY AT No. 75 & 75A (LOT 111 DP 777284) BERKELEY ROAD GLENNING VALLEY – DA 426/2008 -OWNER Mr & Mrs R Sheen Our ref: fxs-rs26

Reference is made to the above application which was considered at the Ordinary Meeting of Council on 10 December 2008, where it was deferred to enable an inspection by Councillors. Whilst we anxiously wait on this inspection, we have taken the opportunity to respond to matters raised during the public access section of the meeting.

IMPOSITION OF TITLE RESTRICTIONS ON FUTURE DUAL OCCUPANCIES

Councillor Eaton enquired as to the willingness of the owners to accept a section 88B title restriction to negate the future possibility for the erection of dual occupancies on the lots created in the proposed subdivision, if supported by council. Although our Mr Oliver, advised that there should be no objection, at that time he had no direct instructions from the owners, although they have subsequently confirmed this position. However, on further examination of this issue we now concur with the advice provided by the Council's Senior Development Manager, that such a restriction would not have any legal weight as it would be contrary to the LEP, which permits dual occupancy developments.

This issue has many similarities with the successful SEPP 1 subdivision application example provided to the Council (following our meeting with the regional office of the Department of Planning (DoP)) for a development proposal within adjoining Lake Macquarie City. The relevant aspects can be summarised as:

- Firstly the application before Council is for a subdivision, it does not propose to develop either dwelling on the proposed allotments for dual occupancies. Council needs to be aware of substituting one set of facts for another. If the law permits dual occupancy (upon registration of the subdivision) then an application for such a development at that time must be given proper consideration – and not before.
- In any event it is entirely inappropriate to proscribe development which is permissible as is, both attached and detached dual occupancies, which are permitted in all of the rural zones of the current LEP, with the granting of a consent by Council.
- Whether or not such an application might be made is conjecture.
- It is trite law that Council cannot substitute for the application before it, its own view of what is intended or what might ultimately be intended, even if any future use may be illegal (see *Ku-ring-gai Municipal Council v Geoffrey Twibell & associates*. 1979 39 LGRA 154). Furthermore it is not only premature but beyond power (see *Parramatta City Council v Hale* 1982 47 LGRA 319).

- In supporting the application and SEPP 1 objection for the application within Lake Macquarie City, (with variations of 84.8% and 88.24%), the Regional Director of the DoP noted, that the proposal does not increase the residential density on the proposed lots and concerns on possible future increases in density due to potential dual occupancies can be resolved by amending the LEP to prohibit dual occupancy in the locality.

Therefore in light of the above , a more appropriate method to address the Council concerns would be to prohibit dual occupancy in this locality within the selected zone, of the amending DLEP 2011.


REVIEW OF THE 7(f) ZONE AS PART OF THE DLEP 2011

The report to the Ordinary Meeting states that Council may consider the appropriateness of the 7(f) zone as part of the comprehensive LEP review. However, this would involve the commissioning of a comprehensive acoustic investigation for the whole 7(f) zone catchment.

The commitments of funds required for such an investigation would appear not to be justified, as once regard is had to other environmental and ecological issues and the likely minimal increase in the localities development potential. Other areas of the Shire with greater potential would appear to justify a higher priority for Council's expenditure, despite the zoning injustice currently being experienced by a minority of landowners (including our client).

The above response is provided in further support of the current application and SEPP 1 objection. In the interim please do not hesitate to contact our office to discuss any aspect of this response and we look forward to further discussion at the Councillors inspection.

Yours faithfully
OPTIMA DEVELOPMENTS PTY LTD


Chris Oliver
Director / Principal Consultant
CPP MPIA 7762

cc All Wyong Shire Councillors (via email)
cc Mr Ron Sheen