

Graham

"Llynden"
Cook's Lane
Dalwood via Alstonville 2477
23rd February 1994

Councillor D. Roberts
P.O. Box 56
Nimbin 2480

Dear Councillor Roberts,

Re: DA 93/754, Proposed Multiple Occupancy in Davis Rd, Jiggi.

Please find attached a copy of my objections submitted to Council. My objections are largely summarised on page 1. This DA still fails to meet a great many of the requirements of the relevant planning instruments. I sent you a copy of Appendix 1 (the previous DA for the same property) last year and the photographs are attached to the original copy of this letter which was forwarded to Council.

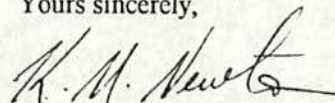
Council has been advised by its solicitors in the Business paper of 15/6/93 that in regard to State Environmental Planning Policy No. 15 (SEPP 15) it has to "form an opinion as to whether all the objectives comprised in SEPP 15 Clause 2 are able to be met." If any one of these is not met the DA should be refused. The fact that one of the requirements of SEPP 15 has been met cannot be used to counteract the fact that another requirement has not been fulfilled. There is no 50% pass mark when assessing DA's under SEPP 15. Unless all the requirements are met and Council "has sufficient information to properly consider the application pursuant to the Act", then consent should be refused. The same applies to other planning instruments.

I understand that Council was recently advised at the Council meeting of 1/2/94 that the problem of failure to enforce consent conditions was not a reason for refusal of consent under SEPP 15 but was rather a workforce issue. Whilst that may be true of other planning instruments, this issue is specifically covered by clause 2(c)(i) of SEPP 15 and therefore also clause 7(1)(h) and is clearly grounds for refusal of consent if it creates a demand for services which are in excess of that which Council is reasonably able to supply.

I also understand that recently unsubstantiated allegations were made that unnamed persons were "trespassing" on the subject property. As the owners of the property do not appear to know where the boundaries of their property are, it may be that these so called "trespassers" were the owners of adjoining properties who have every right to be on their own land. It would appear from the DA that persons have been on my property and removed soil without my consent so Council should be cautious in accepting such allegations without them being tested. The appropriate place for such allegations is the local court and not Council meetings.

As this DA does not meet the requirements of a number of planning instruments, there has been very widespread opposition from the community and consent should be refused.

Yours sincerely,



Mr K.M. Newton

"Llynden"
Cook's Lane
Dalwood via
Alstonville
NSW 2477
4th February 1994

General Manager/Town Clerk
Lismore City Council
P.O. Box 23A
Lismore
NSW 2480

Attention: Mr M. Scott
Your Ref: DA-93/754

Dear Sir,

Re: Development Application at 136 Davis Rd, Jiggi - Lot 41 in DP 802597.

I am the owner of land adjacent to that on which the development is proposed. I wish to lodge objections to the proposed development and request that Council withhold approval for the same. As page 1 of the development application (DA) states "this is a re-draft of DA 93/112", I have attached a copy of my previous objections as Appendix 1 and as the problems with this DA are in large part very similar, it forms the basis of objections to DA 93/754 and should be read as such. The re-drafting of DA 93/112 has not altered the intrinsic limitations imposed by the land on its suitability for development under State Environment Planning Policy No. 15 (SEPP 15).

The first point I wish to raise is that it is quite unclear who actually are the applicants. The title page indicates the applicants are Messrs R. Haeusler, V. Stott, P. Wisdom, A. Doohan, Jonathan, Theana and various consultants named in the document. This appears to be in conflict with the annexure sheet entitled "Applicants/Owners" which shows some other names but not the name of Mr R. Haeusler or the various consultants named on page 1 of the DA. In addition pages (v) and (vi) appear to be merely a photocopy of a similar sheet in DA 93/112. Not only that but there also alterations on page (vi) which have not been initialled nor is there a signature beside them. Council therefore has no real evidence that the persons named on the certificate of title have in fact consented to this development. I draw Council's attention to the judgement in *Amacon Pty Ltd - v - Concord Municipal Council* which stated in part "any person who is an owner within the meaning of the Local Government Act 1919 (New South Wales) must either join in the making of the application or if the application is made by another person the consent of any such owner must be obtained."¹ As this consent has not been given the application should be refused. I would also point out that the DA in numerous places purports to show part of my property, particularly that identified as Lot 1 in Deposited Plan 822865 as part of this development. It would appear that those who have submitted this DA intend to construct a house and other developments either on, through, or in very close proximity to my property. I hereby advise Council that I do not consent to this DA and in view of the case law cited above consent for development should be refused. This DA, like its previous version again fails to comply with Lismore Local Environment Plan 1992 (LLEP 1992). Again I wish to object in relation to Part 1 clause 1, 2(2)(a) to (j), Part 2 Zone No. 1(a) (General Rural Zone) 1(a) to (d), and (h) and clause 33(2). I also wish, as before, to object in regard to non-compliance with SEPP 15 clause 2(a), (b), and (c), clause 5 in regard to "home improvement area", clause 7(1)(c) to (f) and (h), and clause 8(1)(a) to (r), clause 8(2)(a) to (f), and clause 9(3) and consequently also in regard to Environment Planning and Assessment Act 1979 where applicable, particularly noting subclauses 90(1)(q) and (r). As with the previous DA, this DA is also very vague and lacking in specific details and I draw Council's attention to advice from Council's solicitor in relation to the previous DA that "Advice was also provided that if Council considers it does not have sufficient information to properly consider the application pursuant to the Act this must be clearly stated as reasons for refusal. Council was also advised that it cannot grant development consent subject to certain aspects being clarified at a later time. Case law was supplied to the effect."² This advice was re-iterated on page 46 of the same reference in the words "A consent must be "final" and essentially in the form proposed in the application and define or limit, as the case may be, the use to

which the land may be put. Where sufficient information has not been provided and consent granted the Council would not only be vulnerable to appeal against its decision under S123 of the Act, but would also be permitting a development which may have undesirable impacts."

Objections relating to Lismore Local Environment Plan 1992 (LLEP 1992)

The objections I raised in a similar section of Appendix 1 are just as relevant the current DA. At the workshop on Multiple Occupancy (M.O.) on 22/7/93, representatives from the Departments of Agriculture, Water Resources and Conservation and Land Management all indicated that it was not the name applied to the various forms of residential development which determined their impact but was rather the number of persons and the density of development that was relevant. Mr John Schmidt from Water Resources for example pointed out that it is people's activities which impact on the system and Mr Mark Stanton-Cook from Conservation and Land Management said that he considered multiple occupancies to be the same as rural subdivisions as far as their impact was concerned. The impact of residential development on rural lands has recently been well reviewed by Wollondilly Shire Council^{3,4} and I recommend that Lismore City Council undertake similar assessments to form the basis of strategic planning. I feel that it is again necessary to comment in regard to clause 33(2) of LLEP 1992. Despite the onus being on the applicant to demonstrate that the proposed development will be compatible with specified land use (in this case a dairy) which might cause conflict, the applicant developers have again failed to do anything of the sort. They merely pointed out that there are many areas in which conflict can be expected (although their list is far from exhaustive) and fail to offer any real basis on which Council could form the view that this development would be compatible. When DA 93/112 came before Council it was brought to Council's attention the ongoing problems being experienced by dairy farmers who's operation is next to a M.O. in Lismore City local government area. Rather than being diminished over time, the problems seem to be getting worse and worse and the residents of this development are seemingly intent on forcing these farmers out of business. Dairying is one of the few bright spots in Australian agriculture today. The strength and vitality of the Norco Co-operative is extremely encouraging in this region of very high unemployment and the last thing the area needs is Norco's growth to be impaired by its suppliers being forced out of business.

Objections based on State Environmental Planning Policy No.15 (SEPP 15) and consequently also Environment Planning and Assessment Act 1979 where applicable.

As was the case with the previous application, DA 93/754 fails to comply with SEPP 15 for largely the same reasons discussed in Appendix 1. The applicant developers still appear unable to demonstrate that the persons involved in this development have anything more in common than people buying into a strata development. The statement on page 3 about the length of time they have known each other is very vague. It would seem that the number who have known each other for many years is probably rather small (e.g. family members or couples). It would have been simple for the applicant developers to have specified how long they had known each other but they apparently decided not to do so. This is quite puzzling given the huge amount of photocopied material in the appendices of the DA which is of limited value in determining the actual merits of this particular DA on this specific property. As none of the owners of the property appears to have actually signed DA 93/754 it follows that any assurances given in relation to the land management policy could not be considered binding or valid. I certainly do not agree with the policy proposals for that part of my property included in the DA as it would lead to an exacerbation of erosion. I again call Council's attention to the legal construction of clause 2 of SEPP 15 which requires that it be read conjunctively rather than disjunctively. Council is also reminded of the advice of Council's solicitors on page 34 of reference 3 "that Council after proper consideration of the material supplied to it should form an opinion as to whether all the objective comprised in SEPP 15 Clause 2 are able to be met." It seems that a number of the persons making this application are unable to fulfil the requirement in clause 2 (b)(i) to use it as their principal place of residence. Jonathan and Theana who together hold 5/14th share of the M.O. "Adama" in Mulvena Road, Larnook on 22/8/92 signed a DA (under SEPP 15) which became 92/633. Acceptance of the requirement of clause 2 (b)(i) for that to be their principal place of residence would seem to be clearly implicit in the act of signing that DA. In addition, Council in giving consent on 2/2/93 did so subject to a number of conditions amongst which was "3 That all relevant provisions of State Environment Planning Policy No 15: Multiple Occupancy of Rural Lands be complied with at all times." Council's consent conditions also specifically stated at point 6 "That the land be jointly owned by the adult occupiers of the land and used

as their principal place of residence." If, as I understand no objection has been lodged in the year since that consent was granted, it indicates acceptance of those consent conditions. It would appear an untenable position that at the same time as they appeared to be accepting Council's consent conditions for "Adama" they should be submitting another development application under SEPP 15 (which therefore has the same residency criterion). A title search of Lot 41 in D.P. 802597 reveals that Jonathan and Theana together own 6/16th shares in this property as well as mortgages over another 3 shares. It is of note that exactly 4 weeks after signing the development application for "Adama" they should purchase 6/16th of Lot 41 in D.P. 802597 and have mortgages over another 3 shares. They then proceeded to prepare another DA under SEPP 15 (not withstanding Council's consent conditions for DA 92/633) which was submitted on 3/3/93 as DA 93/112. I note that Council has received advice from a number of sources regarding the legal interpretation of SEPP 15. Amongst these is a letter which came from the Pan Community Council dated 25/8/93 to the Manager of the Department of Planning Northern Regional Office arguing that SEPP 15 clause 2 should be read disjunctively. In support of their view they have supplied a letter written by a Mr David Spain who raises two interpretive rules of instruction. However in reading SEPP 15 one does not get beyond the "golden rule" because one can read the entire instrument and not come to an absurd result. It make eminent sense on its own. It has multiple aims and objectives, each of which must be satisfied. The purposive rule does not apply where an instrument is clear when words are given their ordinary or natural meaning. It is only relevant if the instrument doesn't make sense. In the case of SEPP 15 it is quite clear in its terms. The requirement in regards to rural decline is of course quite consistent with clause 2(c)(i). In areas of decline we can expect there is spare capacity within the existing infrastructure to supply services, whereas in areas of growth additional infrastructure must be provided in the form of expensive capital works e.g. hospitals, schools, police stations, court houses, etc.

I have also seen advice from a Mr Greg Newport dated 19/1/93. His letter refers to the purposive approach in statutory interpretation and agrees that the three subclauses in clause 2 must be read conjunctively. However it is erroneous to consider the need to give equal weight to each of the subclauses. Rather each must be satisfied. There is no cause to invoke the purposive approach to statutory interpretation of the instrument. The interpretation clause of SEPP 15 is just that. It is not a substantive clause and it is not correct to turn a interpretation clause into a substantive clause and make it a positive requirement which must be satisfied. Rather, Council must ensure that the substantive provisions are satisfied. Clause 2 (c) refers to 3 disparate things. The first is the protection of the environment and an avoidance of an increase in demand on services, the second is that there should be no subdivisions or the like and the third is an increase in the population in areas of rural decline. The advice to Council would appear to be saying that there is no warrant to read down parts (i) and (ii) of clause 2 but (iii) alone can be read down. The provision relating to areas suffering from rural decline stands alone and there is no qualification of the "areas". If it was intended that this subclause 2(c)(iii) should only apply to areas of rural decline and not apply to prohibit developments in areas of growth it would have instead have been drafted for example as "where the land is in an area suffering from or likely to suffer from a decline in services due to population loss the development creates opportunities for an increase in the rural population." Schedule 2 includes most local government areas on the coast and tablelands and SEPP 15 applies to all of them provided all the substantive requirements are met. It is usual that most statutes have a futuristic aspect to their operation. People are forbidden by the Crimes Act from committing crimes and the Act contemplates that persons may do so in the future rather than because they have just committed a crime. The futuristic operation SEPP 15 is clearly indicated by the words "or are likely to suffer from a decline". We can see how this has relevance when we consider the history of the Nimbin area. Clearly the area was in decline some years ago following which it had an increase in population. Who is to say that this decline in population will not happen again? The applicant developers now appear to accept on page 5 of the DA that the area has an increasing population and therefore consent should not be granted.

The DA also fails to comply with clause 2(c)(ii) as clearly there have been internal agreements where people have been granted exclusive right to occupy a home improvement area. This automatically creates a legal right and would be enforced if that person was later told they could not have that land. Equity has always recognised other rights. In this case, the reference to legal rights can be read down due to the reference to other agreements such as trusts. Although the land may be in one title, there appears to be clear understanding and agreement as to which areas are occupied by whom. Once an agreement is reached, either oral or in writing, it gives rise to a constructive trust. This will be enforced

by courts, the more so if improvements have been erected or crops have been established as the result of an understanding between that person and others. At the very least, the DA indicates a trust in the relevant sense.

The proposal also fails to fulfil any of the requirements of clause 2(c)(i). My objections based on clause 2(c)(i) contained in Appendix 1, now seem to be even more relevant than they were in April last year. The last unemployment statistics indicate that this area of already high unemployment had an increase in the level of unemployment despite the fact that the Australia wide rate of unemployment is falling. Clearly when there is an increase in population which is not accompanied by an increase in the employment base it will lead to a worsening of unemployment and therefore a demand on government services. There is no indication that the proposed development will increase the employment base. Rather than being a development which will protect the environment, the proposal indicates a high probability that it will damage the environment, particularly in relation to contamination of waterways, worsening of soil mass movement and visual impact. Contrary to the assertion on page 9 of the DA that the dwellings are to be clustered it can be seen from the plans provided that they are in fact to be dispersed around the rim of the plateau area and a knoll elevated above the central valley in an arrangement akin to seats in an amphitheatre. Like DA 93/112, this application also conflicts with the requirement that the home improvement area should not exceed 5000 square metres. On page 6 of the DA we find that a specific area is to be "allocated for erecting a dwelling and managing surrounding land". Further down on the same page we find that the areas proposed for community use are to be that part of the property outside the management areas. Further, on page 14 we find that these allotted management areas are to be managed by individuals rather than the community which we find out on page 15 will only manage the remaining 32 hectares of the property. Further down we find that dwelling construction and these individual management projects are to be funded by individual shareholders which as I have indicated above constitutes a trust in the relevant sense and would be enforced by courts, particularly in the situation where improvements have been made. The DA makes it clear that a large proportion of the land will be managed by individuals within the guidelines of the community land management policy. This is exactly the same situation as exists with the home improvement areas and there is clearly no difference between them. The home improvement areas are also owned by all the shareholders unless the property has been subdivided or strata developed in some way contrary to clause 2(c)(ii) of SEPP 15. The only possible alternative would seem to be if the home improvement was an area which was not managed within the community land management guidelines. If this were the case it would make the community land management policy quite irrelevant and the DA absurd. Therefore one can come to only one reasonable conclusion. That is these "allotted management areas" each of 1.6 hectares in size (exactly the same size as the "allotted management areas" in DA 93/112) are indistinguishable from home improvement areas and therefore are in conflict with SEPP 15. Council's solicitors advice at point 3 on page 34 of reference 2 is relevant here.

Also in clause 5 we find that the determining authority for prime crop and pasture land is the Department of Agriculture. As Dr Leigh Sullivan has not given any indication that he is authorised to act as an agent of the Department of Agriculture, Council should not consent to the development without a report prepared by that organisation. I have discussed the map labelled Appendix 2(a) with Mr Robert Smith from the Department of Agriculture. He advised me that this map is indicative only, showing the areas in which prime agricultural land may be found and is certainly not a substitute for proper assessment by the Department of Agriculture. The comments in Appendix 1 are still quite relevant to the development although there now seems to be a lessening of emphasis on shops and other village infrastructure. Comments in relation to clause 7(1)(c) are just as relevant to DA 93/754 as they were to the previous DA. There is still no provisions of plans to allow Council to assess this aspect. The only information provided to Council on this point are in the reports provided by Kieran Byrne and Associates which indicates that the vast majority, if not all, of the houses will be of pole house type construction and therefore the height of these buildings is more than likely to exceed the defined height limit particularly given the slope on which they are intended to be built. Again the advice that Council cannot grant development consent subject to certain aspects being clarified at a later time must be borne in mind.

As regards clause 7(1)(e) the map include with Dr Leigh Sullivan's report and those included with Kieran Byrne and Associates report appear to be prepared by different individuals. There is no indication that either knew what the other was doing and that the sites identified by Kieran Byrne and

Associates may well be on prime agricultural land, particularly as the geotechnical tests appear to have included substantial amounts of prime agricultural land.

In regard to clause 7(1)(f) it appears that the land is indeed being used for the purposes of holiday or weekend residential accommodation despite the requirements of the temporary occupancy permit. In the period after the DA was lodged there appeared to be at least 7 structures on the property which may have been used as dwellings which included a bus, 2 caravans, tents and other similar structures constructed of poles and blue plastic sheeting. Some of these dwellings have since been removed from the property.

Just as with the previous DA, this DA fails to meet the aims and objectives of the Policy.

Matters for council to consider (Clause 8)

Clause 8(1)(a) *"the means proposed for establishing land ownership, dwelling occupancy rights, environmental and community management will ensure the aims and objectives of this Policy are met;"*

I remind Council of the requirement imposed upon it by SEPP 15 to ensure that the aims and objectives of the Policy are met. As I have stated in Appendix 1, ensure means to make certain, to warrant or to guarantee. As there is no estimate of costings on page (iii) although this development clearly involves the erection of buildings and carrying out of work, Council can have very little certainty about the project. However on page 3 at point (1) we find that shares in the property were bought at \$10,000 each and that two shares remain to be purchased. One may ask "Which two shares are these?" According to the certificate of title there are 10 individuals or couples who own only one share each. Are we expected to assume that two of these individuals or couples will sell their shares and donate the proceeds to the development fund? If this was to be the case then they would not be owners using the property as their principal place of residence as is stated in the DA. The other 6 shares are owned by Jonathan and Theana. We learn from page 2 of the document headed "Entrepreneurial Approach" handed out before Council on 15/6/93 that they have "received the agreement of every Share Holder to provide us with "acquisition shares" in exchange for services rendered -" which is presumably to supplement their social security benefits "we are still on". They commented that if the Jiggi proposal failed then they would only earn approximately \$8,000 each. However they also say that this would be "an amount substantially different from that agreed for services rendered". Surely this agreement should be included in the community management plan (and therefore the DA) as it is central to the conduct of the project. We also see that in addition to the \$8 per hour which they would expect to be an absolute minimum they also had cash disbursements of over \$6,000 i.e a total of \$22,000. It would seem that the "fair remuneration", which would result from success in obtaining development consent would be in excess of one share each as they seem to value their work at somewhere between \$80,000 and \$180,000 each. Where then are the other two shares which will provide the development budget? No shares are held in common by all the shareholders, rather all shares are owned by individuals or couples who "may sell their share independently at any time" as we can see from information appended to Appendix 1. It is stated that "proceeds from the sale of these shares provides the development budget to install the various developments outlined in this DA." On page 1 of a statement handed out before Council on 15/6/93 the applicant developers Jonathan and Theana stated that the cost of preparing the various plans for the current DA would be in the order of \$10,000. That only leaves about \$10,000 for the development budget. Since then an earth-moving contractor has been engaged to construct some tracks on the property and the applicant developers stated that they have planted about 3,000 trees. The amount remaining in the development after 2 shares are sold therefore would presumably be substantially less than \$10,000 and unlikely to be sufficient to cover even the half share of the boundary fencing that will have to be completed in the very near future let alone any of the other developments. It seems quite improbable that the applicant developers have funds available to meet the cost of the massive amount of earthworks necessary to construct the proposed dams. I also note that the cost estimate for these development works cited in Appendix 1 of Appendix 1 was approximately \$32,000 and there is no explanation in the current DA to explain this discrepancy. As before there is no estimate of the cost of the "common multifunctional building". There is not even a cost estimate for the apparently extensive foundations that would be required nor for the effluent pond. There is again no cost of the estimate of the many thousands of trees which would be required to re-afforest the areas indicated on Appendix 6 of the DA. As there is a notation at the bottom of that page indicating "NOT

TO SCALE" we can only guess how big these areas would actually be or how many stems would be required.

Clause 8(1)(b) *"the area proposed for erection of buildings, including any proposals for the clustering of buildings"*

DA 93/754 clearly does not indicate a clustered development. As I have stated above the dwellings are to be sited around the rim of plateau and on a knoll above the central basin with further buildings to be located on a slope above the roadway. Also as stated above, the maps prepared as part of the geotechnical report and that prepared to show the agricultural lands appear to have been prepared by different persons and we cannot be sure that buildings will not be on prime agricultural land. Council must also take into account the disclaimer on the last page of the report by Kieran Byrne and Associates entitled "Geotechnical Management and Hazard Identification". This states in part "that sub-surface conditions may change with time after periods of excessive rainfall soil strength would be much less than in the dry period when test bores were sunk." I don't think there would be much argument with this statement, particularly by those who know this property. Although it may protect the company from any possible future litigation, this statement essentially means that Council has no valid indication of whether the sites chosen would be suitable in a wet year. Councillors would be well aware that we have experienced below average rainfall in recent times and that the clear majority of years will be much wetter than the conditions prevailing when the geotechnical report was prepared. Further down the same page Kieran Byrne and Associates state "if the nature of the proposal is not known by this office, further investigation may be required." Given the lack of plans, it would appear that Kieran Byrne and Associates indeed do not know the details of the proposal and certainly this information has not been provided to Council. There is clearly a high degree of uncertainty regarding whether this geotechnical report is at all relevant to what may happen in the future and therefore consent for this development should be refused in accordance with Council's solicitors advice that "it must have sufficient to properly consider the application pursuant to the Act..." No designs are provided for any of the buildings, the proposed spoon drains upslope of the buildings nor the positions of the effluent trenches nor the relationship of any of these spoon drains or effluent trenches to the spoon drains and effluent trenches of adjoining buildings or to other developments such as dams and roads or areas of mass movement. The geotechnical report has been prepared such that each site is considered in isolation as if there were no other buildings planned and there has been no consideration to the cumulative impact of development or how development at one site would impact on adjacent developments. However when one uses the little information provided it can be seen that in many instances the effluent trenches will overlap thereby making it very difficult to divert water from the spoon drains away from the effluent trenches. In other cases, the effluent trenches will be above other dwellings, positioned on or above roadways or in dams. In most cases the effluent trenches seemingly would be located on or very close to steep slopes, in areas which have been identified by the geotechnical report as being subject to mass movement and are well known by people with a long association with the property to have slipped in the past. DA 93/754 again mentions aquaculture on page 12 and therefore my comments on this subject in Appendix 1 are just as relevant. As cottage crafts/arts are also mentioned my comments regarding the possibility of the shop on the property are also relevant. I also mentioned the problems with potential residue from the banana plantation which formerly existed on the property. However it would appear that the applicant developers would prefer to use as their authority "staff at Summerland Real Estate" as is indicated by the annotation made by one of the applicant developers on a copy of my objections to DA 93/112, a copy of which is held by Council. GeoLink Group Pty Ltd in its comments on DA 93/112 mentioned a number of court cases. In *Simpson - v - Ballina Shire Council*, information signed by Mr John Simpson, Regional Manager of Environmental Health, Public Health Unit, North Coast Region, N.S.W. Health Department was presented. It stated in part "Contaminated land - No testing for arsenic has taken place. This is essential if the banana land is to be used for residential purposes since experience elsewhere in the region suggests arsenic is the most common contaminant of old banana land." and further "Environmental Health Impact Assessment should include initial sampling for all chemicals used in the past (probably only dieldren, other organochlorines, lead and arsenic). This should be acceptable to both the EPA and Health Department."

Similar sites have frequently shown contamination in excess of the investigation levels of the Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites.

If several initial composite samples showed any likelihood of contamination further sampling at the

minimum rate of 10/700 m² block taking in a random stratified grid pattern to a depth of 150mm would be required."

Clause 8(1)(c) *"the area or areas proposed for community use (other than areas for residential accommodation and home improvement areas)"*

Again, with DA 93/754 there is inadequate information on how this land is to be used so my comments in Appendix 1 are relevant. Again the applicant developers provide no costings or timetable for this work and as noted above Appendix 6 of the DA which indicates some of the development is not to scale and therefore of little use to Council. The disclaimer in Kieran Byrne and Associates is also relevant to the dam sites and therefore only applies in the current dry conditions. As that report indicates there would have to be a revision of testing in wet years and the results are not applicable to times of high rainfall when the risk of dam failure would be maximal.

Clause 8(1)(d) *"the need for any proposed development for community use that is ancillary to the use of the land"*

Again the applicant developers have not demonstrated the need for a multifunctional community building, they have merely stated that it is proposed. As no plans have been provided we still cannot be sure what its role will be.

Clause 8(1)(e) *"the availability and standard of public access to the land"*

My comments in Appendix 1 remain relevant. Under the current 2 yearly maintenance cycle provided by Council, Davis Road has become badly potholed and is trafficable only at low speed. Council has in the past received rate income and if the subject land continues to be rated as farmland as was done in the past we cannot expect any improvement in this situation. Any s94 levies can be expected to provide only a very temporary improvement in the road conditions. As Council has already approved subdivision of the original block (Subdivision No. 89/30) consent to this development would effectively result in consent to 19 dwellings plus a multifunctional building on land where there previously none. We can expect an increase of about 60 traffic movements on the road without a commensurate increase in rate income for Council. The likely long term effect will be a marked further deterioration in the standard of the road unless additional funds are allocated by Council. This would constitute a subsidy from the public purse to the applicant developers. I note that Appendix 5 of the DA (internal access plan) shows a considerable portion of their vehicular access to be located on my property. As I have indicated above, no consent for this development has been given by me.

Clause 8(1)(f) *"the availability of a water supply to the land for domestic, agricultural and fire fighting purposes and, where a proposed water supply is from a river, creek dam or other waterway, the effect upon other uses of that water supply"*

The DA not only again fails to give adequate information but what information it does give indicates that the water supply will be manifestly grossly inadequate for the demand. The DA on page 18 mentions that several springs with flow rates around 100 litres per day have been found. However we haven't been told if this 100 litres per day is a cumulative amount, how few the number of springs are or the method by which the flow rate was calculated. It could well have been merely that a hole was dug into the reservoir of a perched water table and the "flow" was merely that water which flowed into the hole from the surrounding soil. No date is given as to when these flow rates were estimated. Was it for instance, in early December around the time when the area received in excess of 100 mm of rain. It is unlikely that this flow rate would have continued later in the month as all the springs on my property were dry by the time the development application was lodged. Apart from the logistic difficulties of harvesting these very low flows of approximately 70ml/min, it is absolutely absurd to regard this as being adequate to meet the drinking, domestic, gardening and other horticultural needs of a population of up to 64 people plus a multifunctional building. Again there is no assessment of the roof surface area which would be required to provide an adequate reserve of water for drinking purposes. If 4 people in a household each used 50 litres per day the 4,500 litres proposed would last barely more than 3 weeks. The DA proposes only "access" to a storage of 45,000 which could be dam, bore or spring water. As the water is to be reticulated as shown in Appendix 7 of the DA this could easily mean that there would only be 45,000 litres for the whole of the development. No estimate has been made of the capacity of the pump needed to meet the demands of the residents or to pump from the bottom dam up a static head

of 70 metres plus the additional friction head to the top dam. House sites 2, 3, 4, 5 and 13 are to be located above the 2 largest dams and as will be discussed below there is a high probability of effluent entering these storages making it unsuitable for domestic use. The proposals for water storage are also inadequate for bushfire fighting purposes when measured against the recommendations of the Department of Bushfire Services. They point out that "an adequate reliable supply of water is critical. An independent reserve of at least 22,000 litres must be held in storage."⁵ The applicant developers also give no indication that they have a licence to utilise any of the ground water sources such as well, spring tappers or bores which the Department of Water Resources requires (Ref 2 page 31). Again Council should recall the advice of its solicitors that it cannot grant development consent subject to certain aspects being clarified at a later time. The dam storages also appear grossly overestimated. Again, no details are design, such as capacity, volume of earthworks, peak discharge which would need to be accommodated, size of spillway, dimensions of the cut-off trench, how it is proposed to create a cut-off trench in the rock shelf under Dam 3 or the size of catchments. The geotechnical assessment fails to give any detail of how many bore holes were dug and to what depth and whether any layers of gravel or other geological discontinuities were encountered. Nelson recommends that for small gully dams up to 3 metres high the site should be bored with a minimum of 6 test holes which usually need to be about 3 metres deep.⁶ As have indicated in Appendix 1, the geological peculiarities of this ridge make the successful construction of dams quite difficult. As the applicant developers have not supplied any designs or storage estimations for the proposed dam sites I have gone to the trouble of doing so in order to save Council and its officers the tedious task of trying to extract this information. It should have been provided as a matter of course, as the Department of Water Resources make clear at point (d) on page 31 of reference 2. In my estimates for dams D1 to D4, I have estimated the ground slope from the topographic maps provided, assumed a wall height of 3 metres (as indicated by Kieran Byrne and Associates), a freeboard of 1 metre, internal batter of 2.5:1 and external batter of 2:1 as recommended by DA Appendix 12 and Nelson. For dams 1 to 3, I have assumed the transverse gully slope to be same as the longitudinal gully slope which may possibly overestimate the storage volumes. I used the method of the Queensland Water Resources Commission cited by Nelson and have assumed that the coefficient of cross section at the dam sites to be one. Dam 5, which is a hillside dam on a convex slope with the wall built to similar cross-sectional dimensions as the gully dams and with the wall length being limited only by the roads either side of it, i.e. a distance of approximately 40 metres. The storage (V_s), the volume of earthworks (V_e) and the storage ratio are shown below. Cross-sectional dimensions of the dams are shown in Appendix 3

Dam	$V_s (m^3)$	$V_e (m^3)$	Storage Ratio
1	4.9	340	0.036:1
2	0.4	227	0.0019:1
3	21.7	454	0.036:1
4	93.8	395	0.153:1
5	137.4	1170	0.117:1
Total	258.2	2586	0.01:1

D2 for example would have a storage volume of a mere 400 litres at top water level, yet require 227 cubic metres of earthworks, a storage volume of 0.0019:1. Nelson regards storage ratios of less than 2 as poor. The storage ratio of D2 must surely be regarded as absolutely abysmal and it would be pointless to construct a dam in an area which is indicated in the DA Appendix 3 as being in an area with a slope of more than 18°. It would require approximately 2,600 cubic metres of earthworks to build these dams, yet they would only store about 260,000 litres, a very poor storage ratio of 0.1:1. Due to the generally very steep slopes on which they would be constructed it would not be possible to remove more than a small proportion of the earthworks from an internal borrow pit. This would mean that the vast majority of the wall material would have to be obtained from elsewhere on the property. Just where all this material could be removed from on an unstable hillside without further exacerbating the mass movement problem is quite uncertain. In addition, because of the steep slopes on which they would be constructed, it is likely that the lower portion of the dam wall would become saturated over time leading to a seepage line and failure of the dam wall. As these dams are to be constructed in areas which are normally very boggy and indicative of the gravel seams which run at various layers through the hillside, failure of the wall is even more likely. The other major problem which I mentioned in Appendix 1 is that due to the instability of the hillsides above these gully dams and further instability which may result from construction of the dam walls, if the wall did survive the most likely scenario is

that the storage area would soon become filled with mud after periods of heavy rainfall. My calculations indicate that the storage will be nowhere near 10 megalitres but will only be about 1/40th of that amount. Another aspect of the construction of these dams which does not appear to have been considered is the size of the spillways. We can expect that dam 4 would have to cope with flood flows in the order of 8 cubic metres/sec and that would require a spillway outlet width of about 40 metres and a spillway inlet width of 27 metres through an area which Dr Leigh Sullivan expects would be the subject of severe erosion if disturbed and not amenable to commonly used soil conservation measures. The borrow pit of dam 4 could of course be extended further back behind the dam but this would leave a steep batter and the likely result would be severe soil instability. It is well known that this area becomes very boggy in times of average to above rainfall, presumably because of the proximity of the underlying Kangaroo Creek sandstone which overlies the Walloon sediments. However it appears that no attempt has been made to delineate this level and thus be in a position to provide a risk assessment. The collapse of this dam wall during a flash flood may have very serious consequences as it is close to the road way and a residence is planned immediately downstream on a neighbouring property. Another problem with the dam construction is the very small catchment area for the hillside dam (D5). Although it may be possible to construct small diversion banks these would be limited by the steep terrain. As Dr Sullivan pointed out 25% slope is "the generally recognised maximum slope gradient for the safe operation on the contour of soil conservation earth-moving machinery." The terrain will also present considerable problems in laying the 1.7 km of underground pipeline envisaged. Not only will it have to be laid through very steep country, it will also have to be laid through areas of mass movement. It is likely that when the next episode of mass movement occurs these pipelines will rupture allowing water to drain out of the storages thereby further exacerbating soil slip.

Another problem with the water measurement report in the DA is that domestic water consumption appears to have been underestimated. A commonly accepted figure assuming a reticulated water supply is about 750 litres per household per day⁷. Water for toilets comprises about 10% of this amount and as composting toilets are proposed initially on this development a daily usage of approximately 675 litres per household can be assumed. A similar amount will probably be used in the multifunctional building. Therefore the volume of water to meet the 12 month storage period criterion suggested by Nelson would be about 4.2 megalitres. By contrast the calculated storage volumes would only be sufficient to meet the needs of one of the dwellings. This does not make any allowance for irrigation water for the proposed horticulture projects.

Clause 8(1)(g) *"if required by the applicant, the availability of electricity and telephone services"*
There is still no information to indicate whether the capacity of electricity and telephone services is adequate to meet the demands of the development.

Clause 8(1)(h) *"the availability of community facilities and services to meet the needs of the occupants of the land"*

The applicant developers now concede that the bus service runs only on school days. However they still appear to have failed to take into consideration that it is a government subsidised bus service and as its role is primarily to convey students to and from school at appropriate times and only on school days it is unlikely to be used by anyone in the full time workforce. The applicant developers do not indicate which services are in decline in their comment on page 5 of the DA.

Clause 8(1)(i) *"whether adequate provision has been made for waste disposal from the land"*

This remains a major problem and again insufficient information has been provided in the geotechnical report to allow Council to adequately assess this matter. No plans have been supplied with the geotechnical report. As many of the house site are located eccentrically within the test sample areas which were 30 metres in diameter, it would seem likely that many of the effluent disposal areas would be outside the test area and the soil test results cannot be validly applied to the areas in which the effluent trenches will actually be located. There also appears to be no provision for alternative absorption areas to be used when the original trench fails. A Western Australian study showed that 50% of septic soil absorption systems failed after 8 years.⁸ The Boambee study made the point that "often individual home owners have neither the basic knowledge or inclination to correctly maintain the household septic system. Regular desludgement does not occur so the system fails."⁹ No information has been provided regarding the location of septic tanks or grease traps or whether it would even be

possible for a tanker to negotiate the proposed access roads. As most of the house site are located on very steep slopes where the septic tank would be located downhill it would seem most unlikely that it would be possible to carry out routine desludging maintenance and therefore early failure of the systems with resultant pollution of surface and groundwater should be anticipated. In order to assess the merits of an effluent disposal site a "water balance" calculation should have been provided. Points which need to be considered are rainfall, evapo-transpiration, run-off and soil percolation. It seems that no consideration has been given to the high average rainfall in the area (monthly averages up to 190mm) nor to the frequency of wet years when the soil becomes totally saturated and no further absorption is possible. In the case of Simpson - v - Ballina Shire Council referred to by GeoLink Group Pty Ltd, a report prepared to by Mitchell McCotter and Associates stated "It should be recognised that a slope of 20% is a *maximum* permissible slope and would generally only be appropriate for areas which have highly permeable soils and are well buffered from natural water courses and adjoining properties." and further on "For sites located on clayey soils slopes of less than 15% should be regarded as providing the minimum level of safety".¹⁰ This report also refers to the Environment Protection Authority recommendation of a maximum slope of 15% for irrigation effluent saying "It is recognised that in this case effluent will be discharged directly below the surface, however the same principle applies, namely that effluent will flow more quickly down a steep slope." Further on in the same report it is also stated in the section on soil permeability and cation exchange "tests were done in an uncharacteristic dry period which could have resulted in low moisture bearing soils. Medium to high plastic clay soils typical of the site would therefore readily absorb water giving erroneous percolation rates. Under dry conditions a laboratory test (such as a falling head potentiometer test) may have been more appropriate." As the soils in the area subject to DA 93/754 have been reported by Kieran Byrne and Associates to be of a similar nature then these comments would appear to be relevant. The effluent trenches proposed on page 18 (10 metres for greywater) are grossly inadequate and as can be seen from Appendix 16(11) a total length of 60 metres of trenching is required in the pug clay soils on this site. A major problem with the Kieran Byrne and Associates report is that it views each site as if it existed in isolation. There is no apparent consideration to the overall cumulative effect of the development, how one site would impinge on another or any of the other developments such as roadways, drains or dams and there is very little consideration given to the risk of mass movement at the sites where effluent trenches would be located. The DA clearly is not proposing that a single dwelling be constructed on only one of 17 alternative sites. It is proposing that every one of these would be built on and therefore the cumulative impact and relationships between various components of the development is crucial to an assessment of the DA. Again I have prepared a plan to assist Council and to save Council staff the task of having to extract this information from the applicants who should have provided it in the DA. In preparing Appendix 3, I have superimposed the drawing provided by GeoLink Group Pty Ltd in relation to DA 93/112 over the plans supplied in DA 93/754. The GeoLink map shows slopes of greater than 4:1 and between 6:1 and 4:1 i.e. over 16.7%, as well as areas within 50 metres of water courses. In marking out the positions of trenches I have used the recommendations of Kieran Byrne and Associates that the absorption trenches (marked as a thick red line) would be located on the contour at least 30 metres below dwellings and be 30 to 40 metres in length. This is only about half the length required by Lismore City Council. It can be seen that sites 1, 2, 3, 4, 7, 8, 9, 10, 11 and 12 would be located wholly or partially within 50 metres of watercourses and all except site 13 are likely to be located on slopes of greater than or equal to 6:1 which the Mitchell McCotter report indicated is too steep to provide the minimum level of safety. In addition, the trench for site 5 is likely to be located on a road above site 2 and the site 13 trench is likely to be located partly in the storage area of dam 5, partly in the dam wall and partly in a roadway. The trenches for sites 14, 15 and 16 would either be located above a road or directly on a road. No account has been taken of the difficulties imposed by the many recent landslips which these trenches would be constructed in. It is difficult to even guess where the likely site for effluent disposal for the proposed community building would be, however as the Department of Health in reference 3 on page 31 was not in favour of transpiration beds for this high rainfall area, a 90 day ponding system is really the only alternative left. It is most unlikely that a waste water irrigation system could possibly meet the EPA guidelines given the constraints of the site. There are no plans to indicate where this 90 day ponding system might be located however we can assume that it is probably downhill on a fairly flat site. That is likely to put it in the area near the creek which is subject to flooding. Not only is there the risk of discharge of effluent and failure of the pond wall, in other times the pond would act as an ideal breeding place for mosquitos, vectors for arboviruses such as Ross River virus (debilitating to humans) and 3 day sickness (debilitating or fatal to cattle, especially dairy cattle). Given the proximity of existing and proposed dwellings to the probable pond site and a nearby dairy

herd it would not be in the public interest to allow this type of effluent disposal system because of the health risks it entails.

EPA Guidelines for the use of treated waste water by land application provide a useful review of site selection considerations which should be taken into account.¹¹ Under site selection the document notes that "Sites with clay soils may be more difficult to manage because of their low infiltration capacity and hydraulic conductivity. These characteristics may be even further reduced by sediment clogging and changes to soil structure due to ion exchange with dissolved sodium salts in the waste water." If we consider the factors which are relevant to selecting the site we find that the subject land in this DA is particularly unsuited. The climate is one of high rainfall particularly in the first half of the year and because of the marked variability in rainfall, very wet years are to be expected. The topography is also unsuitable with all but one of the sites having slopes in excess of 15%. The heavy clay soils are poorly suited to absorption after they become saturated with water which results in low permeability and this in turn increases pore pressures and the potential for "slumping" as has been pointed out in reference 10. The heavy clay loam is known to drain poorly and no assessment appears to have been made of soil depth. The EPA recommend soil depths of 1.5- 1.8 metres or more. As stated in Appendix 1 the subject land has a number of gravel layers through it and the EPA guidelines note that such geological discontinuities which provide short circuits to the groundwater must be avoided. The location of these gravel formations has not been determined in the DA. In addition of groundwater in normal to wet years has also not been determined. The EPA recommends the maintenance of a minimum depth of 3 metres to groundwater. The geotechnical report in the DA fails to provide a description of the soil profile which is particularly important in regard to the location of any impervious layers. Such layers predispose to rapid lateral flow of water within the soil, particularly on steep slopes such as those on which the house sites are located and increase the probability of contamination of both surface and groundwater. The EPA guidelines notes that "During the site selection investigations, baseline groundwater chemistry should be established to determine whether each proposed site is subject to existing or potential groundwater contamination problems". It then goes on to consider a number of other factors which must be taken into consideration. The DA gives no indication that this baseline groundwater chemistry assessment has been undertaken. As stated above the local Public Health Unit of the N.S.W. Health Department has become increasingly concerned about the problems of effluent disposal, particularly in relation to the increasing numbers of septic systems being used to dispose of effluent on the North Coast. Following a recent study conducted by them, Dr John Beard made a number of public statements expressing his concern at the level of waterway contamination which they had found. It is clearly in the public interest that Council should take careful note of Dr Beard's warnings. Waterways contamination not only takes the form of faecal pathogens but the nutrient load in the effluent is also a very major problem and has resulted in blue-green algal overgrowth in many river system. We have recently seen in the river at Lismore, weed overgrowth which is thought to be a result of an increased level of nutrients. Given the unsuitability of the subject land for effluent disposal and the small catchment area of the creek in the Davis Road valley it would seem likely that there is a high probability that contamination of the catchment will occur. Again Council is reminded of the requirement in clause 8(1)(a) to ensure the aims and objective of SEPP 15 are met. Degradation of the environment is certainly not one of the aims or objectives of SEPP 15. In the public interest Council must take a long term view of the impact of any development and ensure that it is environmentally sustainable. Council recently allowed subdivision of the original block into 4 lots which effectively means over time 3 other sources of effluent would appear in addition to the 17 proposed in the DA. All this would be occurring on an area which up to now has no effluent disposal trenches located on it. The applicant developers propose composting toilets which later may be converted to conventional water closets. Composting toilets are not without their problems. No indication has been given in the DA whether urine is to be separated from faeces and if so how this urine is to be disposed of. Just as septic systems require routine maintenance, composting systems likewise require routine maintenance except that it needs to be on a more frequent basis. Mixing and aerating of the faecal residue must be ensured and there is a problem with faecal-hand contamination, especially with children and visitors. As indicated above effluent is likely to contaminate dams 4 and 5, the two largest storages proposed. We learn on page 17 of the DA that water from dam 4 will be reticulated to household tanks and if it becomes contaminated this non-potable water would tend to overload individual effluent disposal systems as well as contaminating the whole system.

Solid waste remains a concern. No details are given of the "suitable bins" in which garbage is to be

stored such as whether they would be fly-proof. As the collection point would be a considerable distance from most of the dwellings there well may be an accumulation of garbage around each house site. The planned disposal of paper and cardboard is also a concern as it is likely to be blown around unless it is kept continually damp or otherwise secured. As it is likely there will be insufficient water even for domestic use it is hard to envisage how there will be enough water to wet down all the paper and cardboard around trees and other plants so we may expect that large parts of the property will resemble to collection of rubbish that is now accumulating in the area marked as site 2 in DA 93/112.

Clause 8(1)(j) *"the impact on the vegetation cover of the land and any measures proposed for environmental protection, site rehabilitation or reafforestation"*

This remains another problem area and the comments in Appendix 1 are still very largely relevant. The map marked Appendix 6 in the DA is of little use to Council as it is marked "NOT TO SCALE" and therefore has very little validity. In addition a number of areas have been indicated as "existing rainforest". As can be seen from Plate 1 & 2 these areas contain very little of what could be considered rainforest. There is a small wet patch below the rock shelf in the vicinity of dam 3 that has escaped recent fires but the vast majority of the area marked as "existing rainforest" is comprised of mixed eucalypts, brush box and cassurinas with an understorey of mainly blady grass, bracken fern and Crofton weed. The designation on the map that these are areas of rainforest may convey to Council that they are areas of greater ecological significance than is actually the case. In addition, large areas of the plan are also indicated to be "trees already planted (fast growing species)" which is said on page 15 of the DA to represent over 3,000 trees and shrubs that have already been planted. As can be seen from Plates 3,4 & 5 there appears to be little evidence of these trees and one has to ask how many of these plants have survived and whether Appendix 6 of the DA is an accurate portrayal of the property. Plates 6 & 7 show examples of *Eucalyptus dunneii* on an adjoining property which were planted 10 months ago and were photographed for the purposes of comparison. It is believed that the trees which were planted on the land in the DA were planted about 8 months ago and therefore should be easily seen in Plates 3,4 & 5, particularly as two of the owners of this property are listed on the land transfer document as gardeners. The discrepancy between the map and the photographs may be explained by a recent conversation between the owners of the *E. dunneii* and two persons who they believe were from the property which is the subject of this DA. The two persons from the subject property allegedly said "We haven't got any luck getting any plants to grow" and "How do you get yours to grow so good?" and "We're having no luck with ours" or similar words to these. Given this, it is difficult to accept that all the screening trees proposed or allegedly planted will have any discernible impact for a long time to come. The map also indicates substantial areas of "proposed rainforest buffer" on the higher slopes and ridges. I was advised against planting rainforest species on these ridges by a former district forestry officer Mr Rod Clark, because these areas get very dry particularly the western facing ridges and it seems likely that attempts to establish these species in such areas will meet with even less success than the applicants have had in the wetter areas. Again no costing have been provided to enable Council to have any assessment of whether they can ensure that they massive tree planting program envisaged will actually be carried out and there seems considerable doubt over whether the plants would survive.

Clause 8(1)(k) *"whether the land is subject to bushfires, flooding, soil erosion or slip and, if so, the adequacy of measures proposed to protect to occupants, buildings, internal access roads, service installations and land adjoining the development from such hazards"*

The threat from bushfire on this property is now worse than I can ever recall it, much worse even than when a major bushfire burnt through in the mid 1980's. There is a very high fuel load on the greater part of the property (see Plates 8 - 12 for an indication of the fuel load) and the fire management report appears to conflict with the geotechnical report which recommends "pole house most suitable option" for every dwelling site. Few, if any of the dwelling sites appear to be on level ground, most of the sites being at the top of steep slopes. As is noted in Appendix 13 of the DA, the rate of progress up these slopes would be about 4 times that on level ground and as many local people can verify this is very rapid indeed in the usual circumstances where the fire is being driven by a westerly or south-westerly wind. The construction of a stone wall radiation shield on these steep slopes below each building and high enough to afford protection for each of the pole houses would be a massive engineering undertaking. No indication has been given in the DA how this would be accomplished nor is there even an indication where the stone would come from. Any hedges in the path of the high intensity fires which can be anticipated, given the slopes, prevailing winds and high fuel loads would be destroyed and just be converted into more fuel for the fire. The DA does not propose to follow the recommendations

of the Department of Bushfire Services for an independent reserve of at least 22,000 litres to be held in storage nor does it propose that buildings be built in accordance with the Australian standard for the construction of buildings in bushfire prone areas. No indication is given of the size of the trailer mounted tank and pump or how it would be moved around and given my comments above, how can Council ensure that this will be purchased? Much of the proposed four wheel drive track for fire fighting control is actually proposed for an adjoining property and no consent has been given for this development. Much emphasis seems to be given to the use of rainforest trees as fire resistant species. Whilst it is true to say that rainforests, because they are usually wet do not usually burn, this does not mean that rainforest when they are dry do not burn or that their species are fire resistant, fire tolerant or fire retardant. According to Boland et al. "Rainforests, by definition are usually wet, but almost all Australian rainforests have a relatively dry season annually and the intensity of drought varies between forest types from year to year." and further "While fires in wet sclerophyll forests occur with low frequency the amount of fuel and extreme weather conditions ensure that the fires that do occur are cataclysmic."¹² Given the current management practices of this property and the indications that these practices are going to continue I would most strongly urge Council through its Fire Control Officer and its powers under the Bushfires Act to take steps immediately to prevent such a cataclysmic event from occurring. The applicants do not seem to recognise that the threat of bushfire not only affects them but also affects neighbouring properties. This is particularly true of fires which may start on their land. There are many references in standard texts which attest to the fire sensitivity of rainforest species. For example Francis on page 10 says "In most if not all cases the rainforest constituents are killed by even slight contact with or proximity to the fires which periodically sweep through the eucalyptus and open forests of Australia."¹³ and Floyd on page 3 states "Rainforests are not adapted to fires, which thus encourage their replacement by sclerophyll forests."¹⁴ Buchanan states on page 154 "Adult trees, vines and epiphytes are often killed by fires even of low intensity" and he goes on to explain that if fires occur more frequently than every 10-20 years rainforests will not be present.¹⁵ An example of this phenomenon occurred not far north of the property "Adama" in Larnook. In the mid 1960's a bushfire burnt through a patch of rainforest, killing the rainforest species which have not regenerated and have been replaced by other species. I can find no reference to a genus called "Coprosma". Coprosma is used as an adjective would be, to describe a shrub with thick rounded paired leaves as in *Canthium coprosmoides*. The outcome of planting lines of rainforest trees along the boundary is likely to be rows of dead rainforest trees after each bushfire and may give a very false sense of security to the residents of the proposed developments. It is surprising that the DA does not have a letter from District Fire Control Officer or the local Bushfire Brigade Captain confirming that all property owners are members of the Mountain Top-Georgica Volunteer Bushfire Brigade and attesting to the qualifications, experience and suitability of the nominated property Fire Control Officer, particularly as the risk of a high intensity fire appears to be increasing under current management practices rather than decreasing. Council should obtain this information prior to consideration of this DA.

Although required by clause 8(2)(b) of SEPP 15, the DA does not have site plans which accurately indicate the areas affected by mass movement. See Plates 13 -26 for examples of some of the areas of slip not recorded on Appendix 4(b).

The risk of mass movement is likely to be very much increased by the proposed development, particularly as about one kilometre of absorption trench would have to be installed into a hillside which is already subject to mass movement.

The entrance from Davis Road will not cope with flood flows and will act as a focus for erosion. It can be expected that in flood times the bare earth under the black plastic laid on the creek bank will be rapidly eroded from the gravel washed from this entrance.

Clause 8(1)(i) *"the visual impact of the proposed development on the landscape"*

The proposal in DA 93/754 would have an even worse effect on visual amenity than would DA 93/112. The buildings would be positioned around the outside of a plateau and a nearby knoll at the top of steep slopes. On a 4:1 slope, a tree planted outside the 20 metre fire break would have to be 5 metres tall before it was even level with the bottom of the foundations for the proposed pole houses, let alone any where high enough to screen the building. No house designs have been provided and the applicants appear to be having difficulty growing trees on prime agricultural land and can't be expected to do any better on steep slopes, particularly when water supplies will be quite inadequate. Many of the heights

indicated for plants in Appendix 11 of the DA may not be reached in this area. For example black wattles on my property usually become senescent after they reach a height of about 4 metres and sally wattle succumbs to a similar fate much earlier than it does in southern climates such as Tasmania where it is known as blackwood. Many examples of this early senescence of sally wattles can be seen at Rocky Creek dam. They also prefer moist conditions such as creek banks rather than hillsides in this region.

Clause 8(1)(m) *"the effect of the proposed development on the present and potential use, including agricultural use, of the land and lands in the vicinity"*

The ongoing problems due to a multiple occupancy development being sited next to a dairy farm in Fall's Road Nimbin were brought to the attention of Council when DA 93/112 came before it. Many of the statements in the DA's "Dairy Report" appear to be incorrect. The name of the unknown dairy farmer is not given and there is no evidence this person has any real knowledge of the particular dairy operation. Is this unnamed dairy farmer from Kyogle capable of giving completely independent advice or is he, for example, related to some of the applicants? I will leave it to the dairy farmers affected advise Council on the adequacy of the report. Many areas of conflict are noted but few well thought out strategies to minimise the conflicts (which can be expected from siting dissimilar landuses next to each other) are provided.

Clause 8(1)(n) *"whether resources of coal, sand, gravel, petroleum or other mineral or extractive deposits will be sterilised by the proposed development"*

See Appendix 1.

Clause 8(1)(o) *"the effect of the proposed development on the quality of the water resources in the vicinity"*

See above and Appendix 1.

Clause 8(1)(p) *"any land claims by local aboriginals and the presence of any aboriginal relics and sites"*

The applicant developers do not appear to have taken the advice of the NP&WS on page 31 of reference 2 that an archaeological survey be undertaken (presumably before the bulldozers start rolling rather than afterwards). Given the evidence of recent indigenous habitation (see Appendix 1), the proximity of Nimbin Rocks and the known aboriginal pathway in the area¹⁶, it would seem quite reasonable to expect archaeological sites.

Clause 8(1)(q) *"whether the land has been identified by the council as being required for future urban or residential expansion"*

See Appendix 1.

Clause 8(1)(r) *"whether the development would benefit an existing village suffering from a declining population base or a decreasing use of the services provided in that centre"*

This section is not applicable as it is agreed by the applicant developers that the population is increasing.

Clause 8(2) of SEPP 15 states *"The council shall not consent to an application unless the site plan accompanying the application identifies -"*

Clause 8(2)(a) *"vegetated areas requiring environmental protection or areas where rehabilitation or reforestation will be carried out"*

See above.

Clause 8(2)(b) *"any part of the land which is subject to a risk of flooding, bushfire, landslip or erosion or any other physical constraint to the development of the land in accordance with this Policy"*

Again large areas of mass movement have not been shown on Appendix 4 of the DA.

Clause 8(2)(c) *"any part of the land that is prime crop and pasture land"*

See above.

Clause 8(2)(d) *"any areas of the land to be used for development other than for dwellings"*

No plan has been provided of the multipurpose building or its effluent disposal area.

Clause 8(2)(e) *"the source and capacity of any water supply, electricity, telephone and waste disposals systems for the dwellings"*

See Appendix 1.

Clause 8(2)(f) *"the proposed access from a public road to the area or areas in which the dwellings are to be situated"*

See above in relation to maintenance of septic systems.

EPA Clause 90(1)(q) *"the circumstances of the case;"*

As indicated above, numbers of people appear to have been staying on the property without a temporary occupation permit and there appears to be insufficient water. One can only guess at the sanitary arrangements. Council should give consideration to revoking this permit as there appears to have been substantial non-compliance with it, including that noted on page 39 of reference 2.

There are many areas in the DA where the information supplied does not appear to be correct e.g. Appendix 4, Appendix 6, Appendix 8(a) and (b) (see copies of the same areas attached as appendices 4 and 5 for comparison). Also unsupported statements have been repeatedly made that the land has been subject to overgrazing and may give the impression that by removing grazing animals, the mass movement problems will be overcome. The inescapable conclusion is that Council is being expected to make a decision based on incorrect data.

EPA Clause 90(1)(r) *"the public interest"*

Because of the many problems which can be expected from the development, there is strong community opposition to the development.

Objections based on the adverse effects of the proposed development on the environment.

Statements on page 13 of the DA appear to be just throw away lines. How can it be known that the habitat of a species will be "protected, preserved and increased" if no species has been identified! Species which may be affected by effluent pollution would include riverine species e.g. platypus and eastern freshwater cod (a protected species north of the Macleay River and east of the Great Dividing Range).

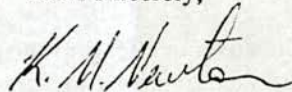
The applicants expect domestic animals on the property (see page 23 of the DA) but there is no indication of any plan for control except in times of bushfires. My comments on this subject in Appendix 1 are still relevant. An officer of the NSW National Parks and Wildlife Service has recommended that I used 1080 poison baits as a control measure. This is another potential source of conflict, particularly given the unreasonable proximity of dwellings to my land (see above).

References

- 1) Town Planning and Local Government Guide, November 1992, P. 486 at 1092.
- 2) Lismore City Council business paper of 15/6/93.
- 3) Wollondilly Shire Council. Rural Residential Study. May 1992.
- 4) Wollondilly Shire Council. Agricultural Lands Study. April 1992.
- 5) Department of Bush Fire Services. Have you a farm fire prevention plan? May 1991.
- 6) Nelson K.D. Design and construction of small earth dams. Inkata Press. Melbourne. 1985.
- 7) Geary P.M. and van der Graaf R.H.M. On-site wastewater disposal in a small community. Water 18(4):30-32, 1991 cited by Sludge Application Programs Unit of NSW Agriculture. The suitability of soils in the Glenning Valley to receive domestic effluent. A report compiled for Wyong Shire Council. 1992.

- 8) Swards. Operation and maintenance of soil absorption systems in Perth. West Australian Health Surveyor. 6, 1984. cited by Coffs Harbour City Council, An investigation into bacterial levels of Middle Boambee Creek. August 1991.
- 9) Coffs Harbour City Council, An investigation into bacterial levels of Middle Boambee Creek. August 1991.
- 10) Mitchell McCotter and Associates. Exhibit 12. Statement of evidence. Land and Environment Court Matter No. 10206 of 1992.
- 11) Environment Protection Authority NSW. Draft guidelines for the use of treated wastewater by land application. March 1992.
- 12) Boland D.J, Brooker M.I.H, Chippendale G.M., Hall N., Hyland B.P.M., Johnston R.D., Kleinig D.A., Turner J.D. Forest trees of Australia. 4th ed. Thomas Nelson. Melbourne. 1984.
- 13) Francis W.D. Australian rainforest trees. Australian Government Publishing Service. 1981.
- 14) Floyd A.G. Rainforest trees of mainland south-eastern Australia. Inkata Press. Melbourne. 1989.
- 15) Buchannan R.A. Bush regeneration: recovering Australian landscapes. TAFE Student Learning Publications. 1989.
- 16) Steele J.G. Aboriginal pathways in southeast Queensland and the Richmond River. Queensland University Press. St Lucia. 1984.

Yours sincerely,



Mr K.M. Newton

Graham
Rob also has copy of this
Please restrict circulation.

JIGGI NEWSLETTER #5 22.9.94 FROM JONATHAN

To All Share Holders,

On 15/8/94 a telephone Call-over from the Land & Environment Court set a Call-over date in Sydney for 24/8/94 to decide if the Appeal is to be heard before a Judge or an Assessor in Sydney, or in the Northern Rivers area, and to clarify whether both DA 93/112 & DA 93/754 could be appealed on one Application to the Court.

I attended that Call-over in Sydney to seek the Court's leave to amend the Appeal to DA 93/112. We can appeal DA 93/754 up to 19th April, 1995 - which we may do if the Appeal on DA 93/112 has a dis-agreeable outcome. We can use DA 93/754 in the Court hearings and introduce new Reports and evidence to support DA 93/112.

The Court directed that the Appeal be heard by a Judge "because of the complexity and legal issues involved". I argued for it to be heard around Lismore - agreed. The hearing is to be from November 28 to December 2 (that is when a Judge is available for this area).

Council has supplied a Statement of Issues to the Court with 32 reasons to support its Refusal (see enclosed). Careful analysis of this Statement indicates that we can properly address all points. However points 6 & 7, dealing with "decreasing population" in the Jiggi area present us with a possible legal challenge; point 14 on "over development", point 3 "compatible with the dairy" and point 1 "scenic and rural amenity" is arguable. The rest may be already covered by current or extra Reports. Council is arguing its case using a Barrister, Greg Newport (Sydney) and 10 local objectors as well as Hugh Johnson, Council's Senior Development Planner.

This raises the question as to whether we may be well enough prepared to deal with all issues using Kieren Byrne, Chris Lonergan, Trevor Jones, and myself. It is useful to consult Keith Graham, a solicitor, on one or two technical legal matters.

SECONDARY TEXTBOOK ALLOWANCES

TO ALL PARENTS OR LEGAL GUARDIANS:

Subject to the following conditions:

- (1) Payment will only be made for students enrolled as at 1st Monday in March each year.
- (2) To be eligible, the parent/legal guardian must be resident in New South Wales. (A.C.T. residents should apply to the Commonwealth Department of Education, Canberra.)
- (3) This allowance is for textbooks only and there is an obligation on the parents to see that it is so used. The allowance is not to be used in payment of any other fees which may be called for, e.g., school service fee or sports union dues.
- (4) State bursars are eligible for these textbook allowances and their parents also must complete this form. The additional textbook allowance to which they are entitled will be included in the bursary cheque for the 1st term, secondary school pupils will receive textbook grants in accordance with the following scale of payments:

1992

YEARS 7, 8, 9, 10	\$ 27-50 PA
YEARS 11 and 12	\$ 68-00 PA.

Parents may elect to have their child's allowance paid direct to the principal of the school as a credit towards their subscription to the school textbook hiring scheme, or under certain circumstances direct to them.

N.B. WILL YOU PLEASE INDICATE YOUR WISHES HEREUNDER AND RETURN THIS FORM TO THE SCHOOL PRINCIPAL WITHIN 7 DAYS. DELAY IN COMPLETION COULD RESULT IN THE ALLOWANCE NOT BEING PAID UNTIL NEXT YEAR.

A separate form for each eligible secondary pupil in the family is required.

PLEASE
USE
BLOCK
LETTERS

Name of pupil: WILSON SCOTT ROLAND Year 9
(SURNAME) (OTHER NAMES)

School: ST JOSEPHS NURFFE COLLEGE Allowance Claimed.....

Name of parent or legal guardian: E WILSON
(INITIALS) (SURNAME)

Address: P O Box 7
HERD HIVE ISLAND NSW N.S.W. Postcode 2495

Please arrange for my child's textbook allowance to be paid:

(a) ~~to the principal for payment to the school textbook hiring scheme.~~

or

(b) direct to me at the above address.

(Strike out (a) or (b), whichever is not applicable.)

I am resident in New South Wales. No previous application for payment of textbook allowance for this pupil has been submitted for the current year.

(Signed) [Signature]
(PARENT OR LEGAL GUARDIAN)

2.13.92

(COMPLETED FORM TO BE RETAINED BY THE SCHOOL)

DA 93/112

STATEMENT OF ISSUE by Council.

1. Whether the proposed development is in conflict with objectives (b) and (c) of the general Rural 1(a) zone pursuant to Lismore Local Environmental Plan 1992. OK?
2. Whether the proposed development complies with the provisions of Clause 17 of the Lismore Local Environmental Plan 1992. OK
3. Whether pursuant to Clause 33 of the Lismore Local Environmental Plan 1992 the proposed development will be compatible with specified land use located in the locality which may cause conflict with proposed development. O.K.
4. Whether the proposed development complies with Lismore City Council Development Control Plan No. 27 - Buffer Areas. O.K.
5. Whether the proposed development complies with the Lismore City Council Development Control Plan No. 20 - Multiple Occupancies of Rural Lands. O.K.
6. Whether the proposed development complies with Clause 2 of SEPP No. 15 - Multiple Occupancy of Rural Land. MAY BE OK
7. Whether the Council may consent to the proposed development when all the aims and objectives of SEPP 15 Clause 2 are not met as required pursuant to Clause 7 (1)(h). MAY BE OK
8. Whether the proposed development involves a subdivision or other form of separate land title or in the manner which involves separate legal rights to parts of the land through an agreement or arrangement in contravention of Clause 2(c)(ii) of SEPP 15. O.K.
9. Whether the proposed development impacts adversely on the environment due to an adverse impact on the water quality of existing water sources. O.K.
10. Whether the land in the proposed development is suitable for on site disposal of effluent in the manner proposed in the Development Application. O.K.
11. Whether the proposed home occupation sites. O.K.
12. Whether the proposed development is suitable given the instability of the land and past history of landslip. O.K.
13. Whether the proposed dwelling site locations are in areas subject to landslip and movement which make development on the specified sites inappropriate. O.K.
14. Whether the proposed density of settlement constitutes an over development of the land. MAYBE O.K.

- See also #1
15. Whether the proposed development impacts adversely on the landscape and scenic quality of the locality. OK.
16. Whether the land is subject to slip; OK.
17. Whether the land is subject to high bush fire risk; OK.
18. Whether erosion and landslip hazards will adversely affect the internal road system and proposed dam sites as set out in the Development Application. OK.
19. Whether the proposed development is likely to exacerbate the soil erosion problems of the site. OK.
20. Whether there is an adequate public transport to and from the proposed development site. OK.
21. Whether there are utility services available to the subject property from Northern Rivers Electricity and Telecom. OK.
22. Whether the Council has not been provided with sufficient information which would enable it to consider the matters raised pursuant to Section 90(1)(e) the Environmental Planning Assessment Act. *EXISTING INFRASTRUCTURE, DESIGN, etc. OK.*
23. Whether the Council has been provided with sufficient information which would enable it to assess the relationship of the proposed development to the development on adjoining land and other land in the locality and in particular to the existing dairy to the south of the development site pursuant to Section 90(1)(h). *NOT OK*
24. Whether a number of dwelling sites have inadequate setback to adjoining agricultural uses and whether such inadequate setback create a potential for conflict with those agricultural uses. OK.
25. Whether several dwelling sites and associated improvements areas encroach onto or adversely affect agricultural use of land identified as prime agricultural land. OK.
26. Whether the substantial public interest generate and receipt by Council of 61 written objections indicate that the proposed development is not in public interest. *NOT OK*
27. Whether the amenity of the neighbourhood now and in the future would be significant and altered to the detriment of the existing residents. *NOT OK*
28. Whether the proposed Development Application complies with Section 77(1)(b) of the Environment Planning Assessment Act 1979 in that the registered proprietor of land known as Lot 1 in D.P. 822865 has not consented to the use of his land which has been included in the Development Application. OK.

29. Whether the proposed Development Application complies with Section 77(1)(b) of the Environment Planning Assessment Act 1979 in that all of the registered proprietors of land have not consented to the application. OK.
30. Whether the proposals for supply and storage of water are adequate. OK.
31. Whether pursuant to Section 90(1)(c2) of the Act an adequate report has been submitted to identify fauna on a site and any impact as a result of the development. OK.
32. Whether any reports have been provided to Council to enable it to consider the matter raised in Clause 8(1)(p) of SEPP 15. *NO REPORTS* OK.

CHRIS LONERGAN

Planning Consultant: Environmental Assessment: Project Design

Lot 7 Parkway Dr. Ewingsdale, NSW. 2481

Ph. (066)847172 Fax. (066)847148

General Manager

Lismore City Council

P.O. Box 23A

Lismore

2480

Dear Sir,

Re. Pending Appeal, Refusal Notice 93/754, Proposed 16 Dwelling
Multiple Occupancy, Lot 41 D.P. 802597, 136 Davis Road,
Jiggi.

I refer to the above and advise that I have been instructed by the owners of the above property to assist them with the presentation of their case to Council at a mediation meeting, and if necessary on to the Land & Environment Court.

I must say, having been involved in the successful approval of other Multiple Occupancy applications within the Lismore City Council area, it appears that the subject application either meets or exceeds the statutory, environmental and social criteria set for Multiple Occupancy, and as such should have been approved.

In this regard I strongly urge Council to objectively reassess their opposition to this application, which appears from the evidence, to have been swayed by emotive submissions from local residents, rather than by an appraisal of the supportive information submitted with the application.

In relation to Council's reasons for refusal, these are addressed as follows:-

1) Water Quality and Effluent Disposal

The Geotechnical reports submitted, the Water management report submitted, and the applicants intent to extensively use composting toilets of a type approved by the N.S.W. Dept of health, means that it is most unlikely that there will be any impact on water quality within the area, and indeed a far less impact than that associated with the operation of the large dairy some distance to the south west.

As proposed in the D.A., provided that all grey water is disposed of into the adequately designed transpiration fields, as designed by Trevor A Jones & Assoc., then the soil types as detailed within the soils reports will be well able to deal with all effluent generated.

A fortunate feature of the development site is that it has been previously cleared for farming, and many access roads already exist. This means that site disturbance will be minimal in relation to the development of the site for the proposed M.O.

Despite this, construction and site works e.g. Access Roads, Drainage and Building Construction, will all in some way require initial removal of vegetation and are all possible sources of suspended solids, entering the local drainage system.

Fortunately the development areas within the property are separated from the drainage system by cleared pasture. These grassed areas will cause the velocity of surface water to be reduced to a level where most of the suspended solids will fall to the floor of the pasture area. Water is then dispersed toward the drainage system at a reduced velocity and free of suspended solids and thus free of phosphates.

When future development does occur, and storm water run off is increased due to roof collection and gravel surfaces within the road system. This increased run off will be concentrated to specific discharge points, where run off will be treated to reduce velocity and collect suspended sediment and nutrient.

These drainage control structures, and the proposed management of effluent, will all conform with previously council approved engineering designs, and will further ensure that the proposed M.O. has no adverse impact on the integrity of the adjacent drainage systems. This is achieved by the methods detailed in the D.A. and results in the removal of potential pollutants from run off, i.e. suspended solids, nitrogen and phosphorus, before they can reach the local drainage system.

Further to this, the applicants propose, that during site works berms of straw bails will be placed between site works and the creeks to ensure that suspended solids do not enter the drainage system. These small berms of straw bails or similar, will be positioned and secured by metal stakes e.g. star pegs in rills and gullies during development works. These porous bails will act to reduce water velocity and collect sediment during the upgrading of the internal access and future dwelling construction. This inexpensive method of sediment control will afford additional protection to the local drainage system.

The Clay soils that characterise this area have variable depth, and are often very shallow due to previous land clearing.

This severely limits its agricultural potential.

The geotechnical reports confirm not only a potential for the construction of future dwellings as proposed, but show that the soil conditions are suited to on site effluent disposal.

The level of detail attended to in this application in relation to erosion control, soil conditions, waste disposal and geotechnical assessment is conclusive, and proves beyond doubt that the proposed development satisfies all reasonable design and control criteria, and thus should not be refused on this basis.

2) "Density" CLAUSE 9 S.E.P.P. No. 15.

The property is zoned Rural 1(a) and has an area of 58.09 ha.

Under the provisions of Clause 9, the maximum number of dwellings permissible is 16.023 for a 58.09 ha. property.

The proposed development meets this standard, and as shown throughout the D.A. submitted, can do so with minimal environmental impact, in a socially responsible way, and totally in accordance with the requirements of S.E.P.P. No. 15.

What must be considered is that the development of this site for Multiple Occupancy will result in the planting of thousands of trees and the total screening of all proposed dwelling sites from local roads and adjacent dwellings.

As such, with the site being shown as capable of taking the proposed 16 dwellings with minimal environmental impact, then the visual screening of this currently cleared former grazing property can only add to the visual amenity of the area, and cannot be regarded as an overdevelopment of the site.

The proposed density is one dwelling per. 3.6 ha.

Council has previously approved a 4 dwelling M.O. application for The Turkey Creek Community, on Lot 11 D.P. 592058 Dunoon Road Rosebank, which has an area of only 4 ha., resulting in a density of one dwelling per. 1 ha.

3) Owners Consent.

All owners have consented to the application. *AND SEE GRAHAM'S SUBMISSION RE
NEWTON'S CLOSED ROADS.*

4) D.C.P. No. 27 Buffers.

D.C.P. No. 27 specifies buffers between dwellings and landuses in rural areas.

The proposed development satisfies all of these criteria.

In relation to Intensive Horticulture, which does not exist on adjoining properties, the nearest dwelling to a boundary is site 8. This site is 40 metres from the southern boundary, and as such could easily meet the 30 metre Biological Buffer if ever Intensive Horticulture occurred on adjacent lands to the south.

Site 8 is also the closest within the property to the Dairy, 540 metres to the S.S.W.

D.C.P. No. 27 specifies an exclusion buffer between dwellings and Dairies of 300 metres, with dwellings being permissible within 600 metres where a biological and or physical barrier exists between the two uses. This is the case in this instance where tree stands and a ridge exist between the two landuses.

As such the proposed development satisfies Councils buffer criteria, and thus should not be refused on this basis.

N.B. a proposed dwelling site exists much closer than those proposed in this application, on the small concessional allotment located between the subject M.O. site and the southern dairy.

5) Impact upon residential amenity.

As stated in point 2, what must be considered is that the development of this degraded and previously cleared former grazing land, for Multiple Occupancy, will result in the planting of thousands of trees and the total screening of all proposed dwelling sites from local roads and adjacent dwellings.

This combined with the adequate setbacks proposed to common boundaries, ensures that the impact of this development on the residential amenity of the area will be minimal.

It must be taken into account that the density of rural settlement around Jiggi is already high as a result of Council's previous concessional allotment policy.

These small allotments are generally cleared and have been developed without the high level of environmental planning and proposed tree planting and environmental stewardship which is proposed in this application.

As such it is most likely that this M.O. will add positively to the residential amenity of the area, particularly considering the care which has been taken in minimising environmental impact, and the plans to revegetate the area in accordance with bush fire guidelines and a desire to establish habitat corridors.

6) Impact upon scenic and landscape quality.

See point 5 above.

7) Character, location and density of development.

See points 2 & 5 above.

8) Landslip and Bushfire Hazard.

Landslip - The depth of investigation into the geophysical characteristics of the site contained within the D.A. submitted, and the resultant designs which minimises risk and plan for erosion control, effluent disposal and site preparation, all show clearly that the development proposed fits in with the environmental and physical constraints of the site.

Possible landslip areas are avoided by the development, and the dwelling sites proposed are consistent with other approved dwelling sites in the area and the Lismore City area generally.

Bushfire Hazard - The report which accompanies the application clearly specifies bush fire management plans for the site.

These meet criteria set by council.

The proposed development sites are unlikely to come under severe bush fire risk due to the cleared nature of most of the sites, and the fact that forest stands in the area are generally characterised by elevated Sclerophyll forest, which constitute a low fire risk to the development of the lower slopes on the property.

Further, the site is mostly cleared to the north and west of proposed dwelling sites, thus making bushfire hazard reduction a simple matter of slashing appropriate buffers around proposed dwelling sites. This predominantly pasture or open forest nature of areas to the north and west of dwelling sites means that the existing fuel to area ratio is low.

This low to medium risk situation is further aided by the development characteristics of the M.O. proposed.

Relevant dwelling design feature, which may be specified by future consent is:

That a 40 metre outer and 20 metre inner hazard reduction buffer be maintained around each dwelling.

These measures will all result in a level of hazard existing that is acceptable in relation to rural residential development.

This is particularly so as water for Fire Fighting, will be available on each site.

Bush Fire Management.

The proposed development sites, being adjacent to large areas of pasture or regenerating Sclerophyll forest bushland, are at certain times of the year in a moderate bush fire hazard area.

Generally the proposed designated dwelling sites' fuel to area ratio is low, and comprises open grass areas, with Sclerophyll forest to the north and east on the higher ridges.

Works may need to be undertaken to lessen the fire hazard in accordance with the recommendations of Council's Bushfire Control Officer, by establishing in some cases an outer hazard reduction radius of 40m. reducing all undergrowth.

These fire management requirements will be effected in the following ways.

- 1) Within 20 metres of dwelling site, all lantana, weeds and small shrubs being removed by hand and the area between the proposed dwelling sites and regrowth being sown with grass and then kept slashed.
- 2) All existing trees are to be retained, as they do not pose a fire threat without fuel beneath them.
- 3) A strip of land 4 metres wide, 40 metres to the north west and east of proposed dwelling sites, is to be planted out with appropriately placed fire retardant and rainforest species.
These types of plants act as a shield to radiant heat, and also help reduce the speed of the fire.

The following BUSHFIRE CONTROL PLANTING SCHEDULE details suitable species which are resistant to flames as recommended by the Australian Plant Study Group. This belt of trees, shrubs and palms, is designed to protect the future buildings from the radiant heat of any approaching bush fire, which is most likely to come from the north west.

This strategically positioned radiation barrier is located on the outer edge of the Bushfire Hazard Reduction buffer zone for maximum effect.

These factors, and compliance with Bushfire Control Plan guidelines, will help protect the future dwellings by reducing the spread and intensity of an approaching fire.

Water Supply:

Either by roof collection, or by augmentation from creeks and dams, all future dwellings to be capable of maintaining a 4,000 litre water tank, clearly marked "For Fire Use Only" adjacent to future dwellings with a 38 mm. "Storz" outlet with a gate valve and male thread. This system is compatible with Bush Fire Brigade pumps and equipment.

Fire Brigade Access:

The existing and proposed access roads will provide easy access to the future dwelling sites and their inner and outer radiation zones.

These roads also act as fire breaks as well as access routes. This not only protects the proposed dwellings and the flora and fauna of the area, it also will help reduce the risk of Wild Fire.

Maintenance:

On going maintenance will include fuel reduction within both inner and outer radiation zones, cleaning out all gutters of leaves and bark, and maintenance of all fire fighting equipment.

Dwelling Design:

These requirements can be incorporated into any consent issued. All eaves to be enclosed, all gutters to be of a non leaf collecting design, and all roofing is to be metal.

Window sizes to the west to be kept small, and all windows be fitted with metal gauze mesh to prevent the entry of sparks or fire brands. This will further lessen the hazard to future development.

The establishment of gardens and trees will supplement the existing trees, add to the rural amenity of the area, and above all can be used as fire retarders and radiant heat shields within the buffer area.

BUSHFIRE CONTROL LANDSCAPING PLAN (BUSHFIRE RADIATION SHIELD)

Design Principles

To provide a landscape design that retards the spread of fire and offers a shield between the fire and the dwellings.

Planting Schedule

Scientific Name	Common Name
<i>Acmena smithii</i>	Lilly Pilly
<i>Archontophoenix cunninghamiana</i>	Bangalow Palm
<i>Banksia marginata</i>	
<i>Cyanthea australis</i>	Tree Fern
<i>Ficus microcarpa</i>	Hills' Weeping Fig
<i>Flindersia australis</i>	Teak
<i>Grevillea rosmarinifolia</i>	
<i>Jagera pseudorhus</i>	Foambark
<i>Macadamia tetraphylla</i>	Macadamia Bush Nut
<i>Macaranga tanarius</i>	Macaranga
<i>Pittosporum undulatum</i>	Sweet Pittosporum

9) Impact on Southern Dairy Farm.

As stated, Site 8 is also the closest within the property to the Dairy, 540 metres to the S.S.W.

D.C.P. No. 27 specifies an exclusion buffer between dwellings and Dairies of 300 metres, with dwellings being permissible within 600 metres where a biological and or physical barrier exists between the two uses. This is the case in this instance where tree stands and a ridge exist between the two landuses.

As such the proposed development satisfies Councils buffer criteria, and thus should not be refused on this basis.

N.B. a proposed dwelling site exists much closer than those proposed in this application, on the small concessional allotment located between the subject M.O. site and the southern dairy.

10) Erosion and Landslip Hazards will adversely affect internal roads and dams.

As clearly detailed in the geotechnical information contained within the D.A., the layout of the site which avoids hazard areas, and the fact that most roads exist, it is most unlikely that the development of the site as proposed will adversely impact on the environment as erosion control measures have been detailed and planned for, and all development sites avoid areas that may be subject to landslip.

It therefore cannot be asserted that the development proposed will be adversely affected by Erosion and Landslip Hazards.

11) Internal roads and dams to exacerbate soil erosion.

As stated above, the D.A. goes to exhaustive detail to demonstrate erosion control measures to be instigated in the development of the site, and as such it cannot be asserted that the development proposed will exacerbate soil erosion.

12) Public Interest.

It is evident from the submissions received, that most of the objections are based on misinformation, suspicion of new people coming into the area, and a lack of understanding of the technical detail supplied with the application.

As already stated, what must be considered is that the development of this degraded and previously cleared former grazing land, for Multiple Occupancy, will result in the planting of thousands of trees and the total screening of all proposed dwelling sites from local roads and adjacent dwellings.

This combined with the adequate setbacks proposed to common boundaries, ensures that the impact of this development on the residential amenity of the area will be minimal.

It must be taken into account that the density of rural settlement around Jiggi is already high as a result of Council's previous concessional allotment policy.

It is most likely that this M.O. will add positively to the residential amenity of the area, particularly considering the care which has been taken in minimising environmental impact, and the plans to revegetate the area in accordance with bush fire guidelines and a desire to establish habitat corridors.

13) Inconsistent with objectives (B) & (C) of Gen. Rural 1(a) Zone.

Objective (B)

"To encourage and permit a pattern of settlement which does not adversely affect the quality of life of residents and visitors and maintains the rural character."

The application's compliance with this objective is detailed above.

Objective (C)

"To ensure development occurs only on land which is suitable for and economically capable of that development and so as not to create conflicting uses;"

The technical reports which accompany the D.A. prove that the development is compatible with the physical characteristics of those sections of the site proposed for development.

The development proposes extensive revegetation for screen planting, bushfire mitigation, and habitat corridor creation. These features not only ensure reduction of visual impact, but when added to the spatial buffers which already exist, e.g. 540 metres to the S.W. Dairy, ensure that conflicting uses will not be created.

14) Inadequate setback to adjoining agricultural landuses.

As already stated for points 4 & 9, D.C.P. No. 27 specifies buffers between dwellings and landuses in rural areas.

The proposed development satisfies all of these criteria.

In relation to Intensive Horticulture, which does not exist on adjoining properties, the nearest dwelling to a boundary is site 8. This site is 40 metres from the southern boundary, and as such could easily meet the 30 metre Biological Buffer if ever Intensive Horticulture occurred on adjacent lands to the south.

Site 8 is also the closest within the property to the Dairy, 540 metres to the S.S.W.

D.C.P. No. 27 specifies an exclusion buffer between dwellings and Dairies of 300 metres, with dwellings being permissible within 600 metres where a biological and or physical barrier exists between the two uses. This is the case in this instance where tree stands and a ridge exist between the two landuses.

As such the proposed development satisfies Council's buffer criteria, and thus should not be refused on this basis.

N.B. a proposed dwelling site exists much closer than those proposed in this application, on the small concessional allotment located between the subject M.O. site and the southern dairy.

15) Impact on Prime Agricultural Land.

There are only two small pockets of Class 3 agricultural land within the site.

These areas are to be used by the community for Community Gardens, and to this end, no dwellings are proposed on them.

Their close proximity to dwelling sites assists in garden maintenance, and does not require buffers due to the organic nature of farming intended.

As such, rather than isolating prime agricultural land, the proposed M.O. optimises its use, particularly considering that these small and isolated segments of Class 3 land would otherwise not be fully utilised due to their small size and isolated locations, making them unviable for standard commercial horticulture.

As previously detailed, adequate buffers exist to all adjacent agricultural landuses.

16) Clause 2(c)ii of S.E.P.P. No. 1.

Already covered in separate submission.

Conclusion

The overall conclusion is that the submitted development application is indeed competent, in that it adequately covers all required detail.

Further, the proposed M.O. meets or exceeds all statutory and zoning requirements for this type of development.

The development is in character with the closely settled nature of the Jiggi area, which is characterised by a large number of small allotments created by Council's previous concessional allotment provisions.

The M.O. is in response to a definite need and environmental impact has been shown to be minimal.

It is considered that the approval of this 16 dwelling Multiple Occupancy, due to its sensitive design and location, will not only have a minimal impact on the environment and visual amenity of the area, but it will also satisfy a genuine need.

It is strongly recommended that Council resolve to approve this application and avoid the costs and inconvenience of this application having to go to mediation or appeal, to achieve its assured approval.

.....
CHRIS LONERGAN. B.A.

2nd. Aug. 1994.

Solicitors & Business Consultants

Principal:

Keith J Graham LL.B.

Notary Public & Registered Tax Agent

Accredited Specialist, Business Law

Suzanne L Creak B.A. LL.B.

Consultant - Family Law

Graham Centre

46 Molesworth Street

PO Box 1100

LISMORE NSW 2480

DX 7768 LISMORE

Phone (066) 218 144

Fax (066) 221 242

Your Ref:

Our Ref: KJG:RT.940435

18 July 1994

Jonathan

PO Box 11

ROCK VALLEY NSW 2480

Dear Jonathan,

RE: DEVELOPMENT APPLICATION FOR M.O. ON DAVIS ROAD, JIGGI

With respect to your request for legal advice concerning Lismore City Council's refusal of Development Consent for the reasons set out in their letter to you dated 28th of April 1994, and in particular with respect to Item 16, which states as follows:-

"16. The development does not comply with Clause 2(c)(ii) of SEPP #15 as relates to the issue of separate title and subdivision."

I note that the provisions of Clause 2(c)(ii) of SEPP #15 states that it is an aim of the State Government Policy "to facilitate development . . . in a manner which does not involve subdivision, strata title or any other form of separate title, . . ."

The word "subdivision" is defined in Section 4 of the Local Government Act (a copy of which is enclosed), the relevant parts of which are as follows:-

"Subdivision . . . refers to dividing land into parts, whether the division is:-

- (a) By sale, conveyance, transfer or partition; or . . .
- (c) By procuring the creation of a folio of the register kept under the Real Property Act in respect of a part of the land."

From my knowledge of your development, I note that you have issued one sixteenth shares in the title to Lot 41, DP 802597 and that the various owners own the property as tenants in common in one sixteenth shares. I note that there is no formal agreement between the owners as to exclusive ownership of any particular part of the property, such as would happen when property owners enter into a Deed of Partition. If there were to be a Deed of Partition between the owners granting exclusive rights over parts of the property, otherwise than under a lease for a period not exceeding five years, then this would constitute a subdivision requiring formal Council subdivision approval, and would be contrary to the provisions of SEPP #15.

Page 4

*Total Students' must not exceed the maximum class size specified by TAFE for this course.

Schools participating in this course proposal	Estimated number of student enrolments						Govt schools only: average travel cost per student per week
	Year 10		Preliminary		HSC Year		
Government Secondary Schools	Males	Females	Males	Females	Males	Females	
COFFS HARBOUR EDUCATION CAMPUS				2		1	
COFFS HARBOUR HIGH SCHOOL			1	1	1		
ORARA HIGH SCHOOL			1	2			
TOORMINA HIGH SCHOOL				5		1	
WOOLGOOLGA HIGH SCHOOL			1	3			\$3

*Non-Govt. sector

[illegible]

19
\$
20

3

* Indicate
CS- Catholic Systemic
CNS- Catholic Non-Systemic
I- Independent

CERTIFICATION AND ENDORSEMENTS

Each statement must be signed.

I certify that the college is able to operate this course for JSSTAFE students, that the student/teacher ratios on page 3 are correct and that the information provided on the Supplementary TAFE Costs form (if applicable) is accurate for the circumstances prevailing at this college at the date of this proposal.

Date 10.8.95

The principals of all Government schools listed above have advised me that they have sighted the relevant TAFE syllabus/es and Assessment Scheme/s, and that the proposed student enrolments and travel costs are correct to the best of their knowledge at the date of this proposal.

I undertake to forward a signed copy of this document to the principals of all Government schools proposing to participate in this course.

Date 10-8-95

The principals of all non-Government schools listed above have advised me that they have sighted the relevant TAFE syllabuses and Assessment Scheme/s, and that the proposed student enrolments are correct to the best of their knowledge at the date of this proposal. An Identification of Funding for Non-Government Schools form in respect of each non-Government school is attached to this proposal.

I undertake to forward a signed copy of this document to the principals of all non-Government schools proposing to participate in this course.

Date 10-8-95

The mere fact that separate Title Deeds have been requested and issued to individual proprietors of the property does not constitute a subdivision. I enclose a copy of Section 100(2) of the Real Property Act, which requires the Registrar General to "create separate folios of the register and issue separate certificates of title" with respect to persons entitled to be registered as tenants in common of shares in land under the provisions of the Real Property Act.

This also does not constitute a subdivision under paragraph (c) under the definition of subdivision, as the creation of a separate Title Deed under that paragraph must be "in respect of a part of the land". As a Title Deed issued to a tenant in common pursuant to section 100(2) of the Real Property Act relates to the whole of the property, and not simply a part of the property, the issuing of separate titles under Section 100(2) of the Real Property Act can not constitute the granting of a subdivision or of a "separate title" as referred to in Clause 2(c)(ii) of SEPP #15.

Should you have any further queries or questions concerning this, please feel free to contact me.

Yours faithfully

Keith Graham

Keith J. Graham
enc

*Graham,
Do you agree with this view?
Is it beyond dispute at law?
Does this hang on the issue of
which is the "supplican/primary"
legislation"?*

Peter

Joint Secondary Schools TAFE Program

1996 JSSTAFE COURSE PROPOSAL FORM

Instructions:

FOR BOARD-ENDORSED OES AND SCHOOL COURSES ONLY

- Please read JSSTAFE Program Guidelines and Procedures 1996 before you complete or sign this form.
- One Course Proposal form should be completed for each Board-endorsed JSSTAFE Course proposed by a Local Management Group. If student demand is high enough to make more than one class viable, take a photocopy of page 4 of this form for each additional class and complete the required details. Each class should be allocated a separate priority when the Local Management Group completes the Course Priority form.
- This form and any additional documents required must be submitted according to the checklist on page of the Guidelines and Procedures
- Please print clearly.

COURSE NAME

OFFICE STUDIES - COMPUTING SKILLS

NORTH COAST

DSE Region

NORTH COAST

TAFE Institute

- The course name must not exceed 40 characters, including spaces.
- If the course is from the 'Ideas for Courses' you must use the name specified for the combination of subjects as it appears in the 'Ideas for Courses'.
- If the course is locally designed, ensure that the name you choose is not the same as any used for 'Ideas for Courses' courses.

This proposal includes (tick one):

- ☐ Government school students only
- ☒ Government and non-Government school students (combined)
- ☐ Non-Government school students only

Submit 6 copies of this proposal by: Friday 18 August 1995

(unless advised otherwise by your DSE Regional Consultant)

For courses to commence in 1996 submit 4 copies of this proposal by: Friday 27 October 1995. For Term 4 '95 courses, submit by 11 September 1995

This course is proposed as (please tick)

- ☒ a discrete class
- ☐ a top-up of a community class (max of 20% of total class places)
- ☐ secondary students joining a community class and costs shared on a pro-rata basis

TAFE COLLEGE

COFFS HARBOUR

Address (include postcode)

GLENREAGH STREET

COFFS HARBOUR 2450

TAFE College Director/Manager

P COLLIER

Phone (066) 591020

Fax (066) 523164

JSSTAFE College Coordinator

BRUCE MACPHAIL

Position in the College

H/T BUSINESS SERVICES

Phone (066) 593133

Fax (066) 593071

GOVERNMENT MANAGING SECONDARY SCHOOL

TOORMINA HIGH SCHOOL

Address (include postcode)

ARMSTRONG DRIVE

TOORMINA 2452

School Principal

G KENNEDY

Phone (066) 533077

Fax (066) 582310

Government Managing Secondary School Coordinator

JOHN BEAR

Phone (066) 533077

Fax (066) 582310

NON-GOVERNMENT MANAGING SECONDARY SCHOOL

JOHN PAUL COLLEGE

Address (include postcode)

HOGGIN DRIVE

COFFS HARBOUR 2450

School Principal

J RIEDY

Phone (066) 533155

Fax (066) 581954

Non-Government Managing Secondary School Coordinator

NOEL HIBBERD

Phone (066) 533155

Fax (066) 581594

TAFE College Directors/Managers and Managing Secondary School principals must endorse and/or certify the accuracy of the information contained in this proposal. Please ensure that the statements on page 4 are signed. Next page please →

OFFICE USE ONLY

LMG PRIORITY NUMBER(S)

REP APPROVAL (tick)

RRG RECOMMENDATION

HR

R

LP

NR

RRG PRIORITY/ PRIORITIES

COURSE CODE(S)

Grahams

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Principal:

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Your Ref:

Our Ref: KJG:RT.94043

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ROCK VALLEY NSW 2480

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Page 2
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Yours faithfully



Keith J. Graham
enc

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which is the "superior/priority"
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Peter