

28/4/94  
Molcalan

That they CAN apply for it  
(is) reason to refuse

on the basis that a subsequent  
agreement to allocate  
rights to specific area of land  
(may) would create a subdivision.

This is false logic & law!

Strategies

○ Get Newport report.

○ Put error to Nick

○ Send copy to DEP + S100(2) & (3)

---

28/4/94. Molcalan will try to  
get  
Newport report.

and for a clarity on "may"



**BONDFIELD RILEY**

JACK RILEY  
DAVID M. RILEY  
MATTHEW J. RILEY

SOLICITORS &amp; NOTARY

15 MOLESWORTH STREET,  
LISMORE, N.S.W. 2480

P.O. BOX 165, LISMORE, 2480  
FACSIMILE (066) 21 9059  
DX 7712 LISMORE

TELEPHONE (066) 21 9000

ADAM D. RILEY  
MELINDA L. CLARK  
MR:GM

OUR REF.

HAJ:MG:DA-93/754

YOUR REF.

19 April, 1994

**URGENT**

The General Manager,  
Lismore City Council,  
DX 7761 LISMORE

Dear Sir,

RE: MULTIPLE OCCUPANCY LOCATED ON DAVIS ROAD, JIGGI - D/A 93/754

We refer to your letter of instruction dated 31st ultimo. Counsel has advised that the answer to the following question:

Is the issue of separate titles to the property known as Lot 41 in DP802597 in contravention of the provisions of SEPP15

is strictly No.

Counsel however believes that the fact that the proprietors can apply for the issue of separate titles in the manner indicated would be a reason to refuse the present development application on the basis that the issue of the separate titles (and a subsequent agreement by the proprietors to allocate rights to specific areas of land may create a subdivision thereby breaching the provisions of the SEPP.

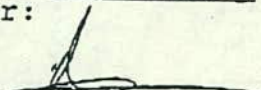
Counsel has indicated that this area of law is largely untested.

For your information we enclose a copy of Section 100(2) and (3) of the Real Property Act which indicates that the Registrar General has the right and obligation to issue separate titles to tenants in common if so requested and the appropriate fee is paid.

Please advise if further clarification is required of any matter relating to this matter.

Council might also advise if any reference has been made in the application to an internal agreement?

Yours faithfully,  
BONDFIELD RILEY  
Per:





---

**CONCLUSION**

Council's staff have attempted to process this application as effectively and efficiently as possible. This process has been somewhat delayed by the applicants not supplying additional information within reasonable time frames to satisfactorily address either issues of concern or objection, eg water supply, geologic stability or waste water management.

Had the issues of supply of water, means of effluent disposal and stability of dwelling sites, access and dams been satisfactorily resolved the Planning Services Division would have more favourably considered the proposal. Clearly it is unlikely that an applicant will be satisfied with any planning report which recommends refusal of his/her application.

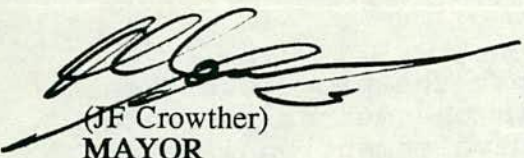
The additional information received this day does little in overcoming concerns as expressed within the Council report and the proposed refusal should therefore be endorsed. Whilst the applicants statement that a reduced number of sites may be favourably considered by the Courts, is not disputed, Council cannot consider any alternative proposal in the light of information supplied within the application. It is open for the applicant to submit an amended application for a reduced number of sites. Should Council wish to facilitate this course of action, it will be necessary for the Council to defer determination of the application as currently submitted for a period of 21 days and invite the applicant to submit an amended application for fewer sites, including all information necessary to assess the proposal.

**Declaration:**

'I hereby declare, in accordance with Section 459 of the Local Government Act, that I do not have a pecuniary interest in the matter/s listed in this report.'

**RECOMMENDATION (PLAN67)**

That Council adopt the recommendation contained in the Business Paper contained at pages 86-87 and refuse the application with a additional reason for refusal being that the development does not comply with Clause 2(c)(ii) of SEPP #15 as relates to issue of separate title and subdivision.

  
(JF Crowther)  
**MAYOR**

---

This is page                      of the Business Paper comprising portion of minutes of an Ordinary Meeting of the Lismore City Council held on April 19, 1994.

---

**GENERAL MANAGER**

---

**MAYOR**

Di agrees with me that this says No  
but is qualified.



**MAYORAL MINUTE**

**SUBJECT/FILE NO.:** DEVELOPMENT APPLICATION NO. 93/754 - MULTIPLE OCCUPANCY, 16 DWELLING SITES, 136 DAVIS ROAD, JIGGI (DA93/754)

**REASON:** To advise Council that:

1. The applicant has requested that Council defer consideration of the application.
2. The applicant has supplied additional geotechnical information.

---

**CONTENT**

**Information:**

Council received this day a request by Jonathan for the applicants for Council to defer consideration of the Development Application No. 93/754. Jonathan expressed strong dissatisfaction with the objectivity of the Planning Report as submitted to the Council at the meeting of April 19, 1994.

It is claimed that the report fails to:

- acknowledge the geotechnical assessment provided in the DA and geotechnical consultants rebuttal of the Coffey Report (9/2/94);
  - recognise screen planting provided on the property;
  - acknowledgement of areas mapped as "protected lands";
  - list all letters of support;
  - supply copy of the submission by Mr K Newton, Government Departments and the second Coffey Report received by Council for the Jiggi residents.;
  - acknowledge information supplied on NRE and Telecom services;
  - adequately acknowledge various reports submitted in the DA, eg dairy, water, management, erosion control, scenic and rural amenity, geotechnical, fire management, agricultural land use and waste management reports.
2. The letter rebuts most of the reasons for refusal of the DA and suggests that every issue raised as an objection or of concern can be dismissed as untrue or rebutted as predictive or presumptive or answered by making concessions or adjustments in the DA and supply of additional information.
  3. Jonathan has also expressed an opinion that the Court will support the application if four dwelling sites are deleted. It was suggested this may placate some objections and satisfy staff and Councillors. An amended application would however have to be submitted to Council.
  4. Council also received today additional information from Jonathan's Consultants to address Council concerns regarding dwelling site stability and waste water management.

**COMMENTS:**

1. The following information has been supplied to the applicant:

---

This is page                      of the Business Paper comprising portion of minutes of an Ordinary Meeting of the Lismore City Council held on April 19, 1994.

---

**GENERAL MANAGER**

---

**MAYOR**



- Not a minute*
- (7)
- a) A copy of submission no. 31 prepared by Mr K Newton. This submission was not summarised within the report because of its length and comprehensive nature, but was separately supplied to Councillors.
  - b) A copy of submissions from Government Departments:-
  2. Coffey Partners International have requested that a copy of the report prepared for the Jiggi residents be not supplied to the applicant.
  3. The geotechnical reports provided with the DA were adequately considered by Council staff both in the context of site inspections, professional experience and information provided by a reputable international geotechnical consultancy.
  4. The various reports, eg dairy, landscaping/erosion control reports were also considered in the preparation of the planning report.
  5. The Environmental Health and Building Services Division have, in relation to the additional information, advised the following:

"It is considered that the information submitted with the Development Application is deficient in several aspects and to such a degree that an informed decision can not be made on the application. Additional information is required on the following:

1. The report of Trevor A Jones and Associates proposes disposal of the greywater effluent into two large transpiration beds. A maximum figure of 300mm per month is quoted a supportive of this method of disposal, however information available to Council indicates a maximum monthly evaporation rate of 188mm. The report does not address how the transpiration area has been calculated, ie transpiration area to effluent flow of litres per day from the dwellings. Nor does it adequately address how the excess effluent will be disposed of during the winter minimum average evaporation rate of 80mm. It would also appear necessary to identify where the transpiration areas are to be located, as the concentration of two large effluent disposal areas in relatively unstable country is critical. The NSW Health Department in a letter of May 26, 1993, indicated that transpiration beds were not considered a viable effluent disposal method and this view is supported by this Department, although it is considered that an alternative disposal system, such as storage and irrigation could be designed for the site, given the area available.
2. There is an inconsistency between the report of the Geotechnical Engineer, who refers to the suitability of the site for 'pole construction' and that the Consulting Structural Engineer who refers to 'normal building foundations with 1m deep piers to the underlying rock' as being suitable. This difference needs to be resolved.
3. There is an emphasis on the water supply which will be available from the dams to be constructed, however the practicality of constructing such dams is open to question. An adequate water supply for dwelling usage could be addressed by the provision of 45,000 litre water tanks to each dwelling.

The above matters could normally be addressed in an 'in principal' approval, if they were the only matters outstanding, however, it is understood that there are additional matters which need to be addressed to the satisfaction of other Departments."

---

This is page                      of the Business Paper comprising portion of minutes of an Ordinary Meeting of the Lismore City Council held on April 19, 1994.

---

GENERAL MANAGER

---

MAYOR



## CONCLUSION

Council's staff have attempted to process this application as effectively and efficiently as possible. This process has been somewhat delayed by the applicants not supplying additional information within reasonable time frames to satisfactorily address either issues of concern or objection, eg water supply, geologic stability or waste water management.

Had the issues of supply of water, means of effluent disposal and stability of dwelling sites, access and dams been satisfactorily resolved the Planning Services Division would have more favourably considered the proposal. Clearly it is unlikely that an applicant will be satisfied with any planning report which recommends refusal of his/her application.

The additional information received this day does little in overcoming concerns as expressed within the Council report and the proposed refusal should therefore be endorsed. Whilst the applicants statement that a reduced number of sites may be favourably considered by the Courts, is not disputed, Council cannot consider any alternative proposal in the light of information supplied within the application. It is open for the applicant to submit an amended application for a reduced number of sites. Should Council wish to facilitate this course of action, it will be necessary for the Council to defer determination of the application as currently submitted for a period of 21 days and invite the applicant to submit an amended application for fewer sites, including all information necessary to assess the proposal.

### Declaration:


'I hereby declare, in accordance with Section 459 of the Local Government Act, that I do not have a pecuniary interest in the matter/s listed in this report.'

## RECOMMENDATION (PLAN67)

## RECOMMENDATION

ADOPTED

That Council adopt the recommendation contained in the Business Paper contained at pages 86-87 and refuse the application with a additional reason for refusal being that the development does not comply with Clause 2(c)(ii) of SEPP #15 as relates to issue of separate title and subdivision.

  
(JF Crowther)  
MAYOR

*Refer, Gilbert - 2/10/94  
Copy of NSW Agric &  
Mr K. Newtons Submission  
addressed to Council  
∴ unknown, unable to  
supply - ~~also~~ suggest  
you contact Cr Roberts  
re latter  
Malcolm Smith*

This is page \_\_\_\_\_ of the Business Paper comprising portion of minutes of an Ordinary Meeting of the Lismore City Council held on April 19, 1994.

GENERAL MANAGER

MAYOR



JACK RILEY  
DAVID M. RILEY  
MATTHEW J. RILEY

**BONDFIELD RILEY**

SOLICITORS &amp; NOTARY

P.O. BOX 165, LISMORE, 2480  
FACSIMILE (066) 21 9059  
DX 7712 LISMORE

15 MOLESWORTH STREET,  
LISMORE, N.S.W. 2480

TELEPHONE (066) 21 9000

ADAM D. RILEY  
MELINDA L. CLARK  
MR:GM

OUR REF.

HAJ:MG:DA-93/754

YOUR REF.

19 April, 1994

**URGENT**

The General Manager,  
Lismore City Council,  
DX 7761 LISMORE

Dear Sir,

RE: MULTIPLE OCCUPANCY LOCATED ON DAVIS ROAD, JIGGI - D/A 93/754

We refer to your letter of instruction dated 31st ultimo. Counsel has advised that the answer to the following question:

Is the issue of separate titles to the property known as Lot 41 in DP802597 in contravention of the provisions of SEPP15

is strictly No.

Counsel however believes that the fact that the proprietors can apply for the issue of separate titles in the manner indicated would be a reason to refuse the present development application on the basis that the issue of the separate titles and a subsequent agreement by the proprietors to allocate rights to specific areas of land may create a subdivision thereby breaching the provisions of the SEPP.

Counsel has indicated that this area of law is largely untested.

For your information we enclose a copy of Section 100(2) and (3) of the Real Property Act which indicates that the Registrar General has the right and obligation to issue separate titles to tenants in common if so requested and the appropriate fee is paid.

Please advise if further clarification is required of any matter relating to this matter.

Council might also advise if any reference has been made in the application to an internal agreement?

Yours faithfully,  
BONDFIELD RILEY  
Per:

