

15827-7-95

# Ruling on MO upsets council

By DEBBIE SCHIPP

It seems the legal battle surrounding a multiple occupancy development at Jiggi is far from over, despite a Land and Environment Court ruling that the 16-lot development can go ahead.

The Lismore City Council is considering appealing against Justice Bannon's decision, handed down on Monday, that an appeal against a unanimous council decision refusing the MO be upheld.

Mayor John Crowther said he was appalled the Land and Environment Court could 'walk over the wishes of the community on this issue', and said the council would fight the decision.

Chief planner Nick Juradowitch said grounds for appeal could be that the court's decision was based on an amended application for the MO filed during the hearing.

He said the amended application was quite different from the application that was the subject of the appeal.

The changes submitted during the hearing re-routed an access road on the property, relocated a transpiration bed, and excluded a closed road from the original application.

Mr Juradowitch said he was disappointed with the decision because it appeared homes would be allowed to be built in unstable areas.

While the council was considering its next move, the applicant for the MO, known only as Jonathan, was

outlining plans to sue the council for costs, compensation and damages.

Jonathan said there were still a number of internal monetary issues to be resolved between shareholders.

He said some of them were not happy with the way he had handled the process, the increased costs of a second application and going to court, and his refusal to reduce the number of sites.

He said the court decision had vindicated his views, and might help resolve the shareholders' dispute.



Mr JURADOWITCH

He said the next step would be filing building applications, although 'if it's any consolation to opponents' it could be up to 10 years before the 16 sites were developed.

The Jiggi MO battle lines were drawn more than two years ago when a development application (DA) for for the 16-lot development in Davis Road, Jiggi, was lodged with the council.

Nearby residents opposed the plans, saying the land was slip-prone, 16 lots were too many and the property was unsuitable for MO development.

In June, 1993, the council unanimously rejected the DA.

A second DA, still containing 16 dwellings, was lodged in late 1993.

In April 1994, it too was unanimously rejected by the council.

The resulting Land and Environment Court appeal ended with Monday's decision over-ruling the council's refusal.

**DEPARTMENT OF SCHOOL EDUCATION  
NORTH COAST REGION**

**REQUEST FOR ISSUE OF RELIEF VOUCHERS**

TO: BUDGET OFFICER  
Department of School Education  
PO Box 422 LISMORE 2480

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**J. Sheridan**  
**BUDGET OFFICER**  
**FINANCIAL PLANNING & CONTROL**

## Land and Environment Court of New South Wales

## Record of hearing

Judge	Bannon J
Number	10353 of 1994
Parties	Applicant <u>JONATHAN AND OTHERS</u> Respondent <u>LISMORE CITY COUNCIL</u>
Key issues	<ul style="list-style-type: none"><li>Multiple occupancy under SEPP 15 in rural area. Variation of original proposal. Materiality. Conditions.</li></ul>
Hearing dates	27 March 1995 to 30 March 1995
Judgment	Reserved
Date of judgment	24 April 1995
Appearances	Applicant - by their agent, Jonathan Respondent - Mr G. Newport of Counsel
Solicitors	Respondent - Bondfield Riley
Number of pages	11
Summary of orders	Application to use land for multiple occupancy granted. Respondent Council to file Minutes within fourteen (14) days of date of judgment incorporating conditions of approval as set out in reasons for judgment. Exhibits to be returned. Liberty to apply. No order as to costs.

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IN THE LAND AND  
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No.10353 of 1994

Coram: Bannon J

24 April 1995

JONATHAN AND OTHERS

Applicants

v

LISMORE CITY COUNCIL

Respondent

JUDGMENT

This is a planning appeal by Jonathan and his associates ("the applicants"), against the refusal by Lismore City Council ("the Council") to grant a development application for a multiple occupancy of rural land at Jiggi near Nimbin. The Development Application sought approval to use the land for 16 dwellings and a common multi-functional building. The land in question comprises over 50 hectares of land being Lot 41 Deposited Plan No.802597. The letter of refusal was dated 28 April 1994 (Exhibit 2, pp.169,170). The appeal was vigorously opposed by the Council and by the nearby farming and residential community, eight of whom gave evidence, while two or three times that number sat in Court and exhibited their disapproval. A number of written objections are contained in Exhibit 2.

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Jonathan appears to possess only that name, and someone suggested that he had abbreviated his more conventional Christian name and Surname to the one tri-syllabic word, by deed poll. Perhaps the same goes for Theana. A list of the applicants who own the subject land as tenants in common is appended to this judgment. A copy of a Certificate of Title relating to the land is contained in Exhibit 2, Folios 187-188.

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the statement in a letter from Dr. L. Sullivan, Lecturer in Soil Science, University of New England to Jonathan and Theana dated 5 May 1993 (Exhibit 2, Folio 353) with attached report at Folios 354 to 360. In his letter, Dr Sullivan said:

"On the basis of my on-site inspection of the above property I can advise you that I assess the amount of Class 3 agricultural land within the above property to be no more than 7%. In addition there is no Class 1 or 2 agricultural land present on the property".

No attempt was made to contradict Dr Sullivan's opinion. This leads to the conclusion that only three and a half hectares, or seven acres, of the land is suitable for agriculture. The land is in the form of a three sided amphitheatre rising from Davis Road to the East, North and South. It lies to the West of the (hopefully) extinct volcanic craters of which Mount Warning forms part. The rise to the Eastern ridge is fairly steep and some of the land has been the subject of earth movement and slip from time to time. A report to the Council from the Department of Conservation and Land Management dated 31 January 1994 (Exhibit 2, Folios 291 and 292) refers to this, but claims no expertise. A further letter from CALM to Mr R. Haeusler dated 22 October 1993 deals with suggested road construction and dam sites (Exhibit D).

The chief objection to the proposed development mounted by the Council was that the site was unsuitable for the proposed dwellings by reason of soil instability and slip. This argument was supported by the evidence of Dr P. Shaw, a Geotechnical Engineer, with Coffey and Partners. Dr Shaw's report is Exhibit 3 and his Curriculum Vitae is Exhibit 11. Further support was derived from a paper (Exhibit

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4.

17). Dr Shaw was an articulate and informative witness. He left me in no doubt that portions of the subject land have suffered slip in the past and are liable to suffer slip in the future. The plans of the proposed development had been amended in the application stage and became Exhibit A. Working from the plan (Exhibit A) showing the proposed dwelling sites and entry road, Dr Shaw marked areas of landslip backscarf and of slip debris movement on the plan being Figure 2 to his Report. Some of the proposed sites were clear of slip and some were not. There was also an area of slip near the access road and near some of the proposed dams. In an endeavour to overcome Council objections on this basis, during the hearing Jonathan tendered two proposed amendments, one becoming Exhibit H and the other Exhibit N.

Mr G. Newport, of Counsel appearing for the Council, objected to the admission of these documents. He submitted that Dr Shaw had based his Report on Exhibit A, and to consider the proposed amendments would deny the Council procedural fairness. At this stage it should be observed that Dr Shaw never tested the site. As his Report fairly discloses it is based on a desk study and a walk over assessment. I do not see that admitting Exhibits H and N affected the opportunity of Dr Shaw to report on the site or the quality of his Report. He was still able to say in oral evidence, as he did, what he observed about the site. However, there are further cogent reasons which suggested to me that the Council was not taken by surprise. Jonathan and his associates had caused information concerning borehole charts of drillings on the proposed sites to be forwarded to the Council by consultants Kieran Byrnes and Associates, some of whose Reports appear in the Council files (Exhibit 2,

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5.

Folios 306 to 308 and 361 to 437). The Council did not seek further information, nor did it ask permission to make tests itself. The first four borehole results are to be found in Exhibit F and later charts in Exhibit K.

I do not regard Exhibits H and N as proposing material amendments to the proposal. The proposal remains fundamentally the same for 16 dwellings on a multi-occupancy site. Mr Newport submitted that some sort of estoppel in pais prevented the applicants from going from one proposed variation to another. I do not accept this. The Court is not constrained to abandon consideration of the application before the Court simply because amendments are proposed. An examination of the transcript of the first day's hearing at pp.29 to 37 reveals that it is by no means clear that the applicants were abandoning their original application, but simply tendered Exhibit H as a way of meeting objections. Further, it may grant the application with variations if these variations do not alter the proposal in a material particular. Exhibit H proposed moving some dwellings out of the path of identified slip, and Exhibit N excised a parcel of land belonging to a Mr Newton, which had been included by mistake, an old unnamed road site, and the plan proposed moving dams and a transpiration bed led to better positions, following criticism. I do not consider either of them involves a material alteration of a proposal to put 16 dwellings on 50 hectares of land. But a further consideration emerges. It is open to the Court to approve the application, subject to conditions which postpone final consent, *Parkes Developments Pty Limited v Cambridge Credit Corporation Limited and Another* (1974) 33 LGRA 196 at 204 and s.91AA of the Environmental Planning and Assessment Act, 1979 ("the Act") now gives statutory authority for this course.

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## 6.

Another geotechnical engineer who wrote a Report and gave oral evidence was Mr T.A. Jones. His Report is Exhibit J and his Curriculum Vitae is Exhibit M. He prepared the alternative layout Exhibit H. Mr Jones said it was true that there were areas of landslip on the subject property, but it was not nearly as serious as the Council alleged. He said Mr Byrnes' borehole results showed that loose soil did not extend very far from the surface and that solid rock was found at varying depths averaging 1.5 metres up to 3 metres. One site, No.3a, found rock at 4.85 metres.

Mr Jones said that if the dwellings were erected with foundations on wooden piers socketed into the rock there would be no danger from slip and the homes would have a reasonable life expectancy. He also said any slip problems with the access road would be overcome by providing a banked and bituminised road in any area of loose material.

A strong attack was mounted upon the qualifications of Mr K. Byrnes, who carried out the borehole tests and whose reports are Exhibits F and K aforesaid, as well as those contained in the Council Files (Exhibit 2). Although he describes himself as a geotechnical consultant, he admitted he did not complete a degree course at Macquarie University and lacked tertiary academic qualifications. However, he has had 25 years experience in his field of activity, beginning with employment with the Department of Main Roads. He has examined many landslips and no attack was made on the accuracy of his core-drilling or upon the accuracy of his borehole logs.

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## 7.

In my opinion Mr Byrnes' evidence on these matters should be accepted, and I also accept the opinions both of Mr Jones and of Mr Byrnes that the proposed houses may be built safely, notwithstanding the presence of some landslip in the upper portions of the soil. If necessary, the sites can be varied slightly as indicated in Exhibit H without any material departure from the development proposal before the Council and now before the Court. It appears to me that the argument as to landslip can be solved by imposing a term of any consent, that no building is to be erected until a certificate from a geotechnical engineer is given to the Council, certifying that the proposed structure is reasonably secure. A similar certificate should be given as to the structure of the access road. Council's proposed conditions 9 and 10 (Exhibit 2, Folios 10-13) cover this.

A further submission on behalf of the Council related to the siting of dams and of transpiration beds. These, in my opinion, are not of the essence of the application. The sites suggested in Exhibits H and N appear to be satisfactory. It is important that run-off does not pollute nearby creeks and waterways. I believe approval may be granted subject to their siting being as proposed in Exhibits H and N, subject to the reasonable satisfaction of the City Engineer. It was pointed out that if necessary the households could survive using rainwater and tanks drawing from the cottage rooves. In an area of plentiful rainfall I think this is true, but installation of the dams is also desirable, especially to assist with firefighting, a matter raised by the witness Mr R.F. McGrath. Building the new houses from scratch will enable modern fire resistant construction to be employed. The details of construction are matters to be dealt with under a building approval, and do not arise in the present proceedings.

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8.

The New South Wales National Parks and Wildlife Service by letter dated 18 January 1994 to the Council (Exhibit 2, Folio 290) stated:

"The Service is satisfied that the proposed development of 16 dwelling units on this property is unlikely to significantly affect the environment of protected (including endangered) fauna."

A further issue raised by the Council concerned Aboriginal relics. While it was not suggested that Aboriginal relics existed, the Service recommended a survey be undertaken. As there is no evidence of Aboriginal relics on the site, I see no reason to delay this application in a search for relics. The Report (Exhibit 6) threw no light on this question.

It was also alleged that the 16 dwellings proposed on the site would unfavourably affect the visual amenity of the neighbourhood. This appeared to be wholly indefensible as a proposition. In my view, they would hardly be noticeable, and could well be an improvement on some existing farmhouses.

Likewise Mr L.H. McNamara, a dairy farmer on adjoining land to the South, and Miss M.D. Crooks who owns 5 acres immediately South were concerned, the latter with the loss of privacy. Mr McNamara was concerned to have adequate screening. I believe lantana and other growth already give sufficient screening, but I am prepared to impose a condition requiring sufficient bush screening on the South of the property to the reasonable satisfaction of the Council's Town Planner.

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9.

Mr K.M. Newton, an adjoining owner on the East raised many objections, some in evidence and some in a detailed statement of 4 February 1994 (Exhibit 2, following Folio 555). His concerns that the development included a reserved road belonging to him has been met by applicants excising that road on the plan (Exhibit N). I am not satisfied the development would seriously affect his views or prevent effective screening.

Weighing up all the factors mentioned in s.90 of the Act, and taking into account the careful considerations of the Council's Town Planner (Exhibit 4) and other officers, without canvassing each in detail, I consider the application ought to be granted.

The Council has a s.94 contribution plan and under the plan, the requisite contribution has been calculated at \$91,965.00 together with contribution under s.64 of the Local Government Act, 1993 (Exhibit 2, Folio 10). No argument has been presented as to why this should not be paid, and I propose to make it a condition of consent. However, the applicants appear to be persons of modest means, and payment of a large lump sum of this nature may prove an insuperable obstacle to development. I would therefore order the payment to be made by annual instalments over a period of seven years, the first payment to be made on 30 April 1996 and the unpaid instalments carrying interest at the rate of 6%, such interest to be paid serialim with each instalment.

The Council also sought a further contribution for roadworks and

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reconstruction of a concrete causeway and a deck overlay on Davis Road and Davis Bridge, citing increased traffic generation as a reason. I am not satisfied the development will make any material difference to the use of the roads, the causeway and the bridge. These are general costings which ought to be met by all ratepayers. I doubt that there is power to add contributions outside of s.94 of the Act. *Fitch v Shoalhaven City Council* (1987) 67 LGRA 165 at 170. I will not impose these conditions.

The remaining conditions proposed by the Council (Exhibit 2, Folios 10 to 13) appear reasonable. Subject to excising Conditions 3, 4, 5 and 6 and varying condition 2 to allow for time for payment as indicated, I uphold the appeal and approve the development application for the land shown in Exhibit N (that is, excising Mr Newton's reserved road), the houses to be located as shown in Exhibit H, the transpiration beds and dams as shown in Exhibit N, and the internal access roads as shown in Exhibit N, subject to the conditions (Exhibit 2, Folios 10 to 13), varied, as indicated herein, including an appropriate additional condition concerning screening on the South as previously indicated.

It should be noted that Mr Newport presented the Council's case with vigour and ability. It is always difficult for Counsel to appear against unrepresented persons. The considerations which lead me to granting the approval arise notwithstanding the care with which the Council's case was presented. I direct the Council to bring in Minutes within 14 days of the date of this Judgment incorporating the conditions of approval as defined herein. Exhibits may be returned with the

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11.

exception of Exhibits A, H and N. Liberty to apply. No order as to costs.

SCHEDULE OF APPLICANTS

SHARES	FULL NAME
1/16	Peter Robert Wisdom
1/16	Gunther Pless
3/16	Jonathan
2/16	Theana
1/16	Alan Doohan
1/16	Anthony Mason Dick
1/16	Pamela Hoang
1/16	Tanya Lee Haeusler
1/16	Kylie Ann Haeusler
1/16	Christopher Allen Steel
1/16	Vyvyan Phillip Stott
1/16	Jonathan and Theana
1/16	John Thomas Doohan and Mary Pamela Doohan

I HEREBY CERTIFY THAT THIS AND THE PRECEDING 10 PAGES ARE A TRUE AND ACCURATE COPY OF THE REASONS FOR JUDGMENT HEREIN OF THE HONOURABLE MR JUSTICE BANNON.



Associate

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the statement in a letter from Dr L. Sullivan, Lecturer in Soil Science, University of New England to Jonathan and Theana dated 5 May 1993 (Exhibit 2, Folio 353) with attached report at Folios 354 to 360. In his letter, Dr Sullivan said:

"On the basis of my on-site inspection of the above property I can advise you that I assess the amount of Class 3 agricultural land within the above property to be no more than 7%. In addition there is no Class 1 or 2 agricultural land present on the property".

No attempt was made to contradict Dr Sullivan's opinion. This leads to the conclusion that only three and a half hectares, or seven acres, of the land is suitable for agriculture. The land is in the form of a three sided amphitheatre rising from Davis Road to the East, North and South. It lies to the West of the (hopefully) extinct volcanic craters of which Mount Warning forms part. The rise to the Eastern ridge is fairly steep and some of the land has been the subject of earth movement and slip from time to time. A report to the Council from the Department of Conservation and Land Management dated 31 January 1994 (Exhibit 2, Folios 291 and 292) refers to this, but claims no expertise. A further letter from CALM to Mr R. Haeusler dated 22 October 1993 deals with suggested road construction and dam sites (Exhibit D).

The chief objection to the proposed development mounted by the Council was that the site was unsuitable for the proposed dwellings by reason of soil instability and slip. This argument was supported by the evidence of Dr P. Shaw, a Geotechnical Engineer, with Coffey and Partners. Dr Shaw's report is Exhibit 3 and his Curriculum Vitae is Exhibit 11. Further support was derived from a paper (Exhibit

## 4.

17). Dr Shaw was an articulate and informative witness. He left me in no doubt that portions of the subject land have suffered slip in the past and are liable to suffer slip in the future. The plans of the proposed development had been amended in the application stage and became Exhibit A. Working from the plan (Exhibit A) showing the proposed dwelling sites and entry road, Dr Shaw marked areas of landslip backscarf and of slip debris movement on the plan being Figure 2 to his Report. Some of the proposed sites were clear of slip and some were not. There was also an area of slip near the access road and near some of the proposed dams. In an endeavour to overcome Council objections on this basis, during the hearing Jonathan tendered two proposed amendments, one becoming Exhibit H and the other Exhibit N.

Mr G. Newport, of Counsel appearing for the Council, objected to the admission of these documents. He submitted that Dr Shaw had based his Report on Exhibit A, and to consider the proposed amendments would deny the Council procedural fairness. At this stage it should be observed that Dr Shaw never tested the site. As his Report fairly discloses it is based on a desk study and a walk over assessment. I do not see that admitting Exhibits H and N affected the opportunity of Dr Shaw to report on the site or the quality of his Report. He was still able to say in oral evidence, as he did, what he observed about the site. However, there are further cogent reasons which suggested to me that the Council was not taken by surprise. Jonathan and his associates had caused information concerning borehole charts of drillings on the proposed sites to be forwarded to the Council by consultants Kieran Byrnes and Associates, some of whose Reports appear in the Council files (Exhibit 2,

## 5.

Folios 306 to 308 and 361 to 437). The Council did not seek further information, nor did it ask permission to make tests itself. The first four borehole results are to be found in Exhibit F and later charts in Exhibit K.

I do not regard Exhibits H and N as proposing material amendments to the proposal. The proposal remains fundamentally the same for 16 dwellings on a multi-occupancy site. Mr Newport submitted that some sort of estoppel in pais prevented the applicants from going from one proposed variation to another. I do not accept this. The Court is not constrained to abandon consideration of the application before the Court simply because amendments are proposed. An examination of the transcript of the first day's hearing at pp.29 to 37 reveals that it is by no means clear that the applicants were abandoning their original application, but simply tendered Exhibit H as a way of meeting objections. Further, it may grant the application with variations if these variations do not alter the proposal in a material particular. Exhibit H proposed moving some dwellings out of the path of identified slip, and Exhibit N excised a parcel of land belonging to a Mr Newton, which had been included by mistake, an old unnamed road site, and the plan proposed moving dams and a transpiration bed led to better positions, following criticism. I do not consider either of them involves a material alteration of a proposal to put 16 dwellings on 50 hectares of land. But a further consideration emerges. It is open to the Court to approve the application, subject to conditions which postpone final consent, *Parkes Developments Pty Limited v Cambridge Credit Corporation Limited and Another* (1974) 33 LGRA 196 at 204 and s.91AA of the Environmental Planning and Assessment Act, 1979 ("the Act") now gives statutory authority for this course.



## 6.

Another geotechnical engineer who wrote a Report and gave oral evidence was Mr T.A. Jones. His Report is Exhibit J and his Curriculum Vitae is Exhibit M. He prepared the alternative layout Exhibit H. Mr Jones said it was true that there were areas of landslip on the subject property, but it was not nearly as serious as the Council alleged. He said Mr Byrnes' borehole results showed that loose soil did not extend very far from the surface and that solid rock was found at varying depths averaging 1.5 metres up to 3 metres. One site, No.3a, found rock at 4.85 metres.

Mr Jones said that if the dwellings were erected with foundations on wooden piers socketed into the rock there would be no danger from slip and the homes would have a reasonable life expectancy. He also said any slip problems with the access road would be overcome by providing a banked and bituminised road in any area of loose material.

A strong attack was mounted upon the qualifications of Mr K. Byrnes, who carried out the borehole tests and whose reports are Exhibits F and K aforesaid, as well as those contained in the Council Files (Exhibit 2). Although he describes himself as a geotechnical consultant, he admitted he did not complete a degree course at Macquarie University and lacked tertiary academic qualifications. However, he has had 25 years experience in his field of activity, beginning with employment with the Department of Main Roads. He has examined many landslips and no attack was made on the accuracy of his core-drilling or upon the accuracy of his borehole logs.

7.

In my opinion Mr Byrnes' evidence on these matters should be accepted, and I also accept the opinions both of Mr Jones and of Mr Byrnes that the proposed houses may be built safely, notwithstanding the presence of some landslip in the upper portions of the soil. If necessary, the sites can be varied slightly as indicated in Exhibit H without any material departure from the development proposal before the Council and now before the Court. It appears to me that the argument as to landslip can be solved by imposing a term of any consent, that no building is to be erected until a certificate from a geotechnical engineer is given to the Council, certifying that the proposed structure is reasonably secure. A similar certificate should be given as to the structure of the access road. Council's proposed conditions 9 and 10 (Exhibit 2, Folios 10-13) cover this.

A further submission on behalf of the Council related to the siting of dams and of transpiration beds. These, in my opinion, are not of the essence of the application. The sites suggested in Exhibits H and N appear to be satisfactory. It is important that run-off does not pollute nearby creeks and waterways. I believe approval may be granted subject to their siting being as proposed in Exhibits H and N, subject to the reasonable satisfaction of the City Engineer. It was pointed out that if necessary the households could survive using rainwater and tanks drawing from the cottage rooves. In an area of plentiful rainfall I think this is true, but installation of the dams is also desirable, especially to assist with firefighting, a matter raised by the witness Mr R.F. McGrath. Building the new houses from scratch will enable modern fire resistant construction to be employed. The details of construction are matters to be dealt with under a building approval, and do not arise in the present proceedings.

## 8.

The New South Wales National Parks and Wildlife Service by letter dated 18 January 1994 to the Council (Exhibit 2, Folio 290) stated:

"The Service is satisfied that the proposed development of 16 dwelling units on this property is unlikely to significantly affect the environment of protected (including endangered) fauna."

A further issue raised by the Council concerned Aboriginal relics. While it was not suggested that Aboriginal relics existed, the Service recommended a survey be undertaken. As there is no evidence of Aboriginal relics on the site, I see no reason to delay this application in a search for relics. The Report (Exhibit 6) threw no light on this question.

It was also alleged that the 16 dwellings proposed on the site would unfavourably affect the visual amenity of the neighbourhood. This appeared to be wholly indefensible as a proposition. In my view, they would hardly be noticeable, and could well be an improvement on some existing farmhouses.

Likewise Mr L.H. McNamara, a dairy farmer on adjoining land to the South, and Miss M.D. Crooks who owns 5 acres immediately South were concerned, the latter with the loss of privacy. Mr McNamara was concerned to have adequate screening. I believe lantana and other growth already give sufficient screening, but I am prepared to impose a condition requiring sufficient bush screening on the South of the property to the reasonable satisfaction of the Council's Town Planner.

## 9.

Mr K.M. Newton, an adjoining owner on the East raised many objections, some in evidence and some in a detailed statement of 4 February 1994 (Exhibit 2, following Folio 555). His concerns that the development included a reserved road belonging to him has been met by applicants excising that road on the plan (Exhibit N). I am not satisfied the development would seriously affect his views or prevent effective screening.

Weighing up all the factors mentioned in s.90 of the Act, and taking into account the careful considerations of the Council's Town Planner (Exhibit 4) and other officers, without canvassing each in detail, I consider the application ought to be granted.

The Council has a s.94 contribution plan and under the plan, the requisite contribution has been calculated at \$91,965.00 together with contribution under s.64 of the Local Government Act, 1993 (Exhibit 2, Folio 10). No argument has been presented as to why this should not be paid, and I propose to make it a condition of consent. However, the applicants appear to be persons of modest means, and payment of a large lump sum of this nature may prove an insuperable obstacle to development. I would therefore order the payment to be made by annual instalments over a period of seven years, the first payment to be made on 30 April 1996 and the unpaid instalments carrying interest at the rate of 6%, such interest to be paid seriatim with each instalment.

The Council also sought a further contribution for roadworks and

10.

reconstruction of a concrete causeway and a deck overlay on Davis Road and Davis Bridge, citing increased traffic generation as a reason. I am not satisfied the development will make any material difference to the use of the roads, the causeway and the bridge. These are general costings which ought to be met by all ratepayers. I doubt that there is power to add contributions outside of s.94 of the Act. *Fitch v Shoalhaven City Council* (1987) 67 LGRA 165 at 170. I will not impose these conditions.

*Graham  
Sett  
/ this*  
*GRAHAM*

The remaining conditions proposed by the Council (Exhibit 2, folios 10 to 13) appear reasonable. Subject to excising Conditions 3, 4, 5 and 6 and varying condition 2 to allow for time for payment as indicated, I uphold the appeal and approve the development application for the land shown in Exhibit N (that is, excising Mr Newton's reserved road), the houses to be located as shown in Exhibit H, the transpiration beds and dams as shown in Exhibit N, and the internal access roads as shown in Exhibit N, subject to the conditions (Exhibit 2, Folios 10 to 13), varied, as indicated herein, including an appropriate additional condition concerning screening on the South as previously indicated.

⑦

It should be noted that Mr Newport presented the Council's case with vigour and ability. It is always difficult for Counsel to appear against unrepresented persons. The considerations which lead me to granting the approval arise notwithstanding the care with which the Council's case was presented. I direct the Council to bring in Minutes within 14 days of the date of this Judgment incorporating the conditions of approval as defined herein. Exhibits may be returned with the

②

11.

exception of Exhibits A, H and N. Liberty to apply. No order as to costs.

SCHEDULE OF APPLICANTS

SHARES	FULL NAME
1/16	Peter Robert Wisdom
1/16	Gunther Pless
3/16	Jonathan
2/16	Theana
1/16	Alan Doohan
1/16	Anthony Mason Dick
1/16	Pamela Hoang
1/16	Tanya Lee Haeusler
1/16	Kylie Ann Haeusler
1/16	Christopher Allen Steel
1/16	Vyvyan Phillip Stott
1/16	Jonathan and Theana
1/16	John Thomas Doohan and Mary Pamela Doohan

I HEREBY CERTIFY THAT THIS AND THE PRECEDING 10 PAGES ARE A TRUE AND ACCURATE COPY OF THE REASONS FOR JUDGMENT HEREIN OF THE HONOURABLE MR JUSTICE BANNON.



Associate

*Dup as set b M. Ball  
24/5/95*

## Land and Environment Court of New South Wales

### Record of hearing

Judge	Bannon J
Number	10353 of 1994
Parties	Applicant <u>JONATHAN AND OTHERS</u> Respondent <u>LISMORE CITY COUNCIL</u>
Key Issues	<ul style="list-style-type: none"><li>Multiple occupancy under SEPP 15 in rural area. Variation of original proposal. Materiality. Conditions.</li></ul>
Hearing dates	27 March 1995 to 30 March 1995
Judgment	Reserved
Date of judgment	24 April 1995
Appearances	Applicant - by their agent, Jonathan Respondent - Mr G. Newport of Counsel
Solicitors	Respondent - Bondfield Riley
Number of pages	11
Summary of orders	Application to use land for multiple occupancy granted. Respondent Council to file Minutes within fourteen (14) days of date of judgment incorporating conditions of approval as set out in reasons for judgment. Exhibits to be returned. Liberty to apply. No order as to costs.

Folios 306 to 308 and 361 to 437). The Council did not seek further information, nor did it ask permission to make tests itself. The first four borehole results are to be found in Exhibit F and later charts in Exhibit K.

I do not regard Exhibits H and N as proposing material amendments to the proposal. The proposal remains fundamentally the same for 16 dwellings on a multi-occupancy site. Mr Newport submitted that some sort of estoppel in pais prevented the applicants from going from one proposed variation to another. I do not accept this. The Court is not constrained to abandon consideration of the application before the Court simply because amendments are proposed. An examination of the transcript of the first day's hearing at pp.29 to 37 reveals that it is by no means clear that the applicants were abandoning their original application, but simply tendered Exhibit H as a way of meeting objections. Further, it may grant the application with variations if these variations do not alter the proposal in a material particular. Exhibit H proposed moving some dwellings out of the path of identified slip, and Exhibit N excised a parcel of land belonging to a Mr Newton, which had been included by mistake, an old unnamed road site, and the plan proposed moving dams and a transpiration bed led to better positions, following criticism. I do not consider either of them involves a material alteration of a proposal to put 16 dwellings on 50 hectares of land. But a further consideration emerges. It is open to the Court to

approve the application, subject to conditions which postpone final consent, *Parkes*

*Developments Pty Limited v Cambridge Credit Corporation Limited and Another*

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my emphasis



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Weighing up all the factors mentioned in s.90 of the Act, and taking into account the careful considerations of the Council's Town Planner (Exhibit 4) and other officers, without canvassing each in detail, I consider the application ought to be granted.

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# ATTENTION GIRLS

In Years 5, 6, 7 or 8 in 1995 Nth Coast

Are you good at mathematics?

Do you enjoy science?

Do you enjoy problem solving?

Would you like to improve your computer skills?

Would you like to spend some time with other girls who have similar interests?

**You may be eligible to attend a science and mathematics camp.**

**When:** Monday 29th May 1995 - Friday 2nd June 1995

**Where:** Lake Ainsworth Sport and Recreation Centre, Lennox Head.

**Why:** The National Equity Programs in Schools (NEPS), Gender Equity Incentives Project is aiming to increase the level of interest and participation in higher level mathematics and science in schools.

A grant has been made available to conduct a workshop camp for girls in years 5, 6, 7, and 8 in 1995 from North Coast Schools.

The camp is designed to increase your: awareness of career and subject choices; personal confidence; subject and personal skills, in an enjoyable and positive atmosphere.

**Who:** 50 students from North Coast Schools

**Costs:** Accommodation, food and resources will be met by the NEPS Grant. Free train travel from railheads south of Lismore will be provided but girls from north of Lismore will be required to make their own travel arrangements

**How to apply:** Return application forms to your school.

All applications must reach Narelle Scott at Summerland ERC by  
**Monday 27th March 1995**

Further enquiries may be directed to:  
Narelle Scott, Regional Co-ordinator Phone 066 283429

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why emphasis

(A)

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Narelle Scott, Regional Co-ordinator Phone 066 283429

KIND REGARDS, PETER!!

**JIGGI NEWSLETTER NO. 8. FROM JONATHAN 24/4/95**

At 9.30 a.m., the Honourable Mr. Justice Bannon of the Land and Environment Court handed down a 12 page Judgement which approved the *de novo* Application for 16 dwellings and Community facilities. A copy of his Judgement is enclosed.

**CONGRATULATIONS ON YOUR PURCHASE !!**

We can now proceed to develop the property as an M.O. with the installation of Access Roads to Dwelling Sites. Dams and the Transpiration Bed as the Development proceeds. Building Applications are the next step for anyone ready to build a dwelling. Section 94 Contributions are payable from 30/4/96 with payments over the following 7 years. The current amount is around \$6,000.00 per dwelling.

It is essential to have a Management Agreement or Constitution to facilitate the Internal Management of the property. Rates are to be set and arrangements made to pay the \$6,000.00 (exact amount to be confirmed in a Financial Report to follow soon) for the 3 Expert Witnesses who attended the Court Appeal.

I propose to sell one Common Share in order to pay the Expert Witnesses and to place an estimated \$18,000.00 into the Common Budget.

I paid \$12,000.00 (exact amount to be confirmed in a Financial Report to follow soon) in out-of-pocket expenses, and totalled over 1,000 hours in mounting and successfully concluding this Appeal. As remuneration I retain proprietorship over one of the two Common Shares.

I am preparing to prosecute the Lismore City Council for the way it handled the whole D.A. process and the Appeal, and to claim the time I spent at \$44.00 per hour, as well as the \$18,000.00 in cash costs for the Appeal, and to claim compensation and damages. When successful, these cash costs (\$18,000.00) and any amounts awarded for compensation and damages are to be made available to the current Common Tenants.

Shareholders may be aware of the pending Local Court Hearing under the Dividing Fences Act with K. M. Newton on 24/5/95. I am willing to handle this matter, with Legal Counsel assistance, for all Common Tenants. I intend to pay all expenses in this action from the Common Funds derived from the sale of the Common Share or from collected rates, whichever occurs first, i.e. costs of phone, mail, travel, photocopy, stationery, briefing Counsel and Counsel's costs to assist.

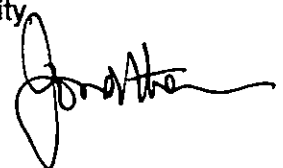
I am willing to continue to act for all Tenants until a Legal Agreement or Constitution is formed which equitably expedites all Management and Financial matters.

I plan to send all Shareholders a copy of the Conditions of Consent when available.

For your information the cost of conveyancing and submitting two D.A.s with Expert Reports and some developments is around \$62,000.00. The cost of the Appeal is also around \$62,000.00 i.e. \$18,000.00 cash and \$44,000.00 for 1,000 hours at \$44.00 per hour (to be recovered from Council in extra Court action).

Theodora (formerly Theana) has relinquished all proprietary interest in the Jiggi property as she has seen "*the wisdom and practicality of maintaining some distance from those Common Tenants who have shown an unwillingness to act responsibly*".

With Integrity  
Jonathan



# Council loses MO appeal

NORTHERN  
RIVERS  
ECHO  
27/4/95  
P.1

The NSW Land and Environment Court has overturned Lismore City Council's refusal of a proposed 16-lot Multiple Occupancy for a 50 hectare property in Davis Road, Jiggi.

The Court's judgement, released on Monday after a four day hearing in Ballina earlier this month, gave approval for the developers, known simply as Jonathan and Theana, to proceed with their MO as it had been submitted to Council earlier this year. The matter had come before the Council several times and always received a negative response.

Only a minor condition requiring bush screening on the south of the property was stipulated by Justice Bannion who, while noting that the Council's case had been presented with

"care", rejected the main refusal ground that the site was unsuitable for building because of soil instability and slip.

The judge, who had conducted a site inspection as well as hearing the objections of neighbours, said the suggestion that 16 dwellings would 'unfavourably affect the visual amenity of the neighbourhood' appeared to be "wholly indefensible as a proposition".

He added: "In my view, they would hardly be noticeable, and could well be an improvement on some existing farmhouses".

Describing Jonathan as a "respectable person with a desire to assist the Court in its deliberations", he noted that the applicants "appear to be persons of modest means" and allowed

them to pay the Section 94 fees in annual instalments over seven years from April 1996.

It is the second major MO appeal lost by the Council. In December, the Court overturned its rejection of a 10-lot MO for The Channon, an appeal that cost the Council an estimated \$40,000 in legal fees.

On Tuesday, Jonathan told *The Echo* that he would "probably take the Council to court to seek costs, damages and compensation for the way they've treated us".

Before the recent State election, the ALP promised to consider restoring the SEPP 15 law allowing MO's which had been scrapped by the Coalition. *The Echo* understands that this position has not changed.

NORTHERN STAR  
27/4/95 P.3

## Ruling on MO upsets council

By DEBBIE SCHIPP

It seems the legal battle surrounding a multiple occupancy development at Jiggi is far from over, despite a Land and Environment Court ruling that the 16-lot development can go ahead.

The Lismore City Council is considering appealing against Justice Bannion's decision, handed down on Monday, that an appeal against a unanimous council decision refusing the MO be upheld.

Mayor John Crowther said he was appalled the Land and Environment Court could 'walk over the wishes of the community on this issue', and said the council would fight the decision.

Chief planner Nick Juradowitch said grounds for appeal could be that the court's decision was based on an amended application for the MO filed during the hearing.

'He said the amended application was quite different from the application that was the subject of the appeal.

The changes submitted during the hearing re-routed an access road on the property, relocated a transpiration bed, and excluded a closed road from the original application.

Mr Juradowitch said he was disappointed with the decision because it appeared homes would be allowed to be built in unstable areas.

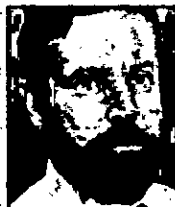
While the council was considering its next move, the applicant for the MO, known only as Jonathan, was

outlining plans to sue the council for costs, compensation and damages.

Jonathan said there were still a number of internal monetary issues to be resolved between shareholders.

He said some of them were not happy with the way he had handled the process, the increased costs of a second application and going to court, and his refusal to reduce the number of sites.

He said the court decision had vindicated his views, and might help resolve the shareholders' dispute.



Mr JURADOWITCH

He said the next step would be filing building applications, although 'if it's any consolation to opponents' it could be up to 10 years before the 16 sites were developed.

The Jiggi MO battle lines were drawn more than two years ago when a development application (DA) for the 16-lot development in Davis Road, Jiggi, was lodged with the council.

Nearby residents opposed the plans, saying the land was slip-prone, 16 lots were too many and the property was unsuitable for MO development.

In June, 1993, the council unanimously rejected the DA.

A second DA, still containing 16 dwellings, was lodged in late 1993.

In April 1994, it too was unanimously rejected by the council.

The resulting Land and Environment Court appeal ended with Monday's decision over-ruling the council's refusal.

# BONDFIELD RILEY

JACK RILEY  
DAVID M. RILEY  
MATTHEW J. RILEY  
ADAM D. RILEY  
MELINDA L. CLARK

SOLICITORS & 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

OUR REF. MR:SS

YOUR REF.

20 April, 1995

Jonathan,  
P.O. Box 11,  
ROCK VALLEY 2480

Dear Jonathan,

RE: ~~K.W.~~ NEWTON - DIVIDING FENCE

We act for Mr. K.W. Newton.

We enclose, by way of service upon you Application for an Order for Fencing Work.

You will note the matter is listed for hearing in the Local Court at Lismore on 24th May, 1995.

Yours faithfully,

BONDFIELD RILEY

Per: 

Enclosure (1)

2605/ss

APPLICATION TO LOCAL COURT FOR AN ORDER FOR FENCING WORK

(Dividing Fences Act 1991 - Section 12)

Applicant: KENNETH MAXWELL NEWTON  
of: "Llynden" Cooks Lane, Dalwood, Via Alstonville  
Respondent: PETER ROBERT WISDOM, GUNTHER PLESS, JOHANTHAN, THEANA, ANTHONY  
MASON DICK, KYLIE ANN HAEUSLER, CHRISTOPHER ALLAN STEEL, THOMAS  
of: DOOHAN, MARY PAMELA DOOHAN and PAMELA WENDY HOANG  
of 136 Davis Road, Jiggi.

I, the undersigned, hereby apply to the Local Court at Lismore, for an order determining the manner in which fencing work between the adjoining properties described hereunder is to be carried out.

Full description Boundary fence between Lots 41 and 42 in D.P. 802597/at Coffee of lands. Street Camp and Jiggi in the City of Lismore Parish of Nimbin County addresses/Lot nos. of Rous. Lot 1 in D.P. 822865  
or other particulars.

On the 20th April, 1994 I served on the respondent, the other adjoining owner, a notice under Section 11 of the Dividing Fences Act requiring the respondent to contribute to the carrying out of fencing work. A copy of that notice is attached. (or) The notice proposed that:

- (a) the fencing work be carried out on the common boundary of the adjoining lands described above.\*
- (b) the fencing work consist of+ four stands of galvanised barbed wire and hardwood posts 1.8m long and placed 75cm in the ground at 3 metre spacings with strainer assemblies as required. Fencing Contractor, D.I. & K.J. Ramsay. Boundary to be pegged prior to fencing by Hosie Haggerty & Associates prior to fencing.
- (c) the estimate cost of the fencing work of \$as below be borne in equal proportions.#  
\$500.00 - Hosie Haggerty & Associates  
\$6.20 per metre of fencing plus \$32.00 per hour labour

One month has expired and no agreement has been reached as to the fencing work to be carried out.

10th April 1995

(Date)

K. M. Newton

(Signature)

\*If it is impracticable to carry out fencing work on the common boundary, the line on which the proposed fencing work is to be carried out must be specified.

+Set out such matters as the type of fencing work, e.g. wooden posts, rails and pailings of a particular height, length of fence e.g. from the alignment of the building etc., the name of proposed fencing contractor.

#If it is proposed that the costs of the fencing work is to be borne otherwise than in equal proportions, the proposed proportions must be specified.

NOTICE OF HEARING

TAKE NOTICE THAT THE ABOVE APPLICATION HAS BEEN SET DOWN FOR HEARING AT  
THE LOCAL COURT, COURT HOUSE, LISMORE, ON THE  
24TH DAY OF MAY, 1995, AT 10 A.M.

P. Macdonald  
CLERK OF THE LOCAL COURT

Copy to be given to -

The Applicant:

The Respondent:



# *The Council of the City of Lismore*

*Council Chambers*

*43 Oliver Avenue, Goonellabah, N.S.W.*

TELEPHONE (066) 25 0500  
FACSIMILE (066) 25 0400

P.O. BOX 23A,  
LISMORE, 2480  
DX 7761

ALL COMMUNICATIONS TO  
GENERAL MANAGER

IN REPLY PLEASE QUOTE



CONTACT Mr Scott-250565

MRS:MR: DA93/754

Planning Services

January 11, 1994

Jonathan, Theana & Others  
PO Box 1029  
LISMORE 2480

Dear Sir/Madam

**RE: DEVELOPMENT APPLICATION NO. 93/754 - MULTIPLE OCCUPANCY  
136 DAVIS ROAD, JIGGI**

Council notes the content of your letters of December 24, 1993 and January 10, 1994.

1. In relation to item points No. 8, 9 and 10 of the letter dated December 24, 1993, please be advised that Council by the operation and extent of Clause 11 of SEPP #15 and Section 86 of the Environmental Planning and Assessment Act 1979 is not in a position to prohibit any person from inspecting and making extract from or copies of the development application and accompanying documents. Please find enclosed a copy of the relevant clause of SEPP #15 and section of the Act for your information. The above advice is supported by legal opinion provided to Council from the Local Government Association of NSW. A copy of the application supplied 4.30pm, 23/12/93, was taken by a land owner in the vicinity of the proposed development the morning of December 24, 1993 prior to Council staff receiving your letter of December 24, 1993.
2. In relation to the matter of Council's extension of the period of exhibition as raised in your letter of January 10, 1994, please be advised the following additional to Council's previous advice of December 23 and 24, 1993 and January 10, 1994:
  - 2.1 Council's letter dated December 24, 1993, was signed on that day. Council is unable to give a firm reason why it was not received by yourselves until January 5, 1994. It is possible that Council's letter missed the last mail run on that day and was not despatched until the office re-opened on January 4, 1994. As you will appreciate, delays in receipt of mail often occurs over the Christmas/New Year period.
  - 2.2 Council reiterates its previous reason for the extension of the public exhibition. That is, to compensate adequately for the lack of public access to view the application during the closure of Council's office from December 25, 1993 to January 4, 1994 (10 days). Council notes the extension of the exhibition period from a closing date of January 24 to February 4, 1994 amounts to nine (9) additional days, not the eleven as suggested in your letter of January 10, 1994.

In addition, Council is committed to the principle of "open government" and recognises that the Christmas/New Year office closure limits public access to view the proposal. The extension of the period of exhibition will not, at this time, unnecessarily delay the processing of the application.

Council has received several telephone and a written request to extend the period of exhibition. Extract of that letter which reflects the contacts with Council staff is enclosed for your information.

- 2.3 Council's Development Control Planner did not receive six (6) copies of the Development Application 4.00pm 21/12/93 as indicated in your letter of January 10, 1993.
  - 2.4 Council's Administrative Offices were closed on December 25, 1993 and opened January 4, 1994. Council has a skeleton outdoor staff operating over this period providing resources to maintain operation of essential water, sewer and road services.
  - 2.5 As indicated in Council's letter of January 10, 1994, Council as at December 24, 1993, had received five additional copies of the amended application. Four of these copies were not complete and considered unsuitable for referral to the six statutory authorities with whom Council seeks comments. As advised, Council, at its cost, made copy of the application for referral purposes.
3. Your comments in relation to the processing times of DA93/112 are noted. For your information the following brief timetable for processing that application is proffered:
1. Received 3/3/93.
  2. Public notification 13/3/94, exhibition to 13/4/93.
  3. Notice to adjoining owners 17/3/93.
  4. Sign on land 18/3/93.
  5. Referral to government agencies 19/3/93.
  6. Request for additional information 23/3/94
  7. Reminder notice for additional information 14/4/93.
  8. Receipt of Geotechnical information - amended by applicant 13/4/93.
  9. Receipt of some required information 15/4/93.
  10. Incomplete agric. report provided 5/5/93.
  11. Advice from Council to applicant 20/5/93 - summary of objections and notice that agric. report incomplete.
  12. Receipt of Agric. report 3/6/93.
  13. Report to Council 15/6/93.
  14. Notice to applicant 24/6/93.

This timetable illustrates that a substantial part of the delay in processing time was due to delays in Council receiving the requested additional information.

Please be assured that Council will fulfil its statutory obligations to process the application as expeditiously as possible. The reduced fee recognises that the amount of field work by Council's Planning and Environmental Health and Building Services staff is reduced and that the application is somewhat similar to DA93/112. The reduced fee does not reduce the application status.

Yours faithfully

(PT Muldoon)  
GENERAL MANAGER

per:



the consent authority may, if it is of the opinion that there is no necessity, by reason that the amended or subsequent development application differs only in minor respects from the former development application, to comply with section 84 with respect to the amended or subsequent development application, decide to dispense with further compliance with that section in relation to that application, and compliance with that section in relation to the former development application shall be deemed to be compliance in relation to the amended or subsequent development application.

(2) The consent authority shall notify the applicant of its decision under subsection (1) at or before the time notice of the determination of the development application is given under section 92.

#### **[100,475] Inspection of development applications, etc**

86 At the places and during the period specified in a notice under section 84(1), any person may inspect the development application referred to in the notice and documents accompanying that application and may make extracts from or copies thereof.

*designated dev? but see s 84(1) & 86A*

#### **[100,477] Effect of inquiry by Commission of Inquiry on determination of development application**

86A (1) This section applies after a consent authority receives notice from the Secretary that the Minister has directed that an inquiry be held, in accordance with section 119, with respect to the environmental aspects of proposed development the subject of a development application.

(2) The consent authority must not determine the development application in so far as it relates to proposed designated development.

(3) The consent authority must not determine the development application in so far as it relates to proposed development that is not designated development until:

- (a) the inquiry has been held; and
- (b) the consent authority has considered the findings and recommendations of the Commission of Inquiry and any comments made by the Minister that accompanied those findings and recommendations when they were forwarded to the consent authority.

[s 86A insrt Act 90 of 1992 s 4 and Sch 1]

#### **[100,480] Submissions in respect of development applications for designated development**

87 (1) Any person may, during the period specified in a notice under section 84(1), make a submission in writing to the consent authority, and, where a submission by way of objection is made, the grounds of objection to the development application referred to in the notice shall be specified in that submission.

(2) Where the application referred to in subsection (1) is an application to which section 78 applies, the consent authority shall, immediately after the expiration of the period specified in a notice under section 84(1) forward copies of any submissions to a Minister or public authority, as the case may be, referred to in section 78, if—

## [121,460] LOCAL GOVERNMENT PLANNING &amp; ENVIRONMENT NSW

**[121,460] Advertised development**

11 (1) This clause applies to development to be carried out pursuant to a consent referred to in clause 7, being development for the purposes of 4 or more dwellings (whether existing or proposed dwellings).

(2) Pursuant to section 30(4) of the Act, the provisions of sections 84, 85, 86, 87(1) and 90 of the Act apply to and in respect of development to which this clause applies in the same manner as those provisions apply to and in respect of designated development.

[cl 11 renumbered Gaz 41 of 26 February 1988]

**[121,465] Monitoring of applications**

12 Where a council receives an application made in pursuance of clause 7, the council shall, within 30 days of determining the application, forward a copy of the application to the Secretary together with a copy of the notice of the determination of the application.

[cl 12 renumbered Gaz 41 of 26 February 1988]

**[121,470] Suspension of certain laws**

13 (1) For the purpose of enabling development to be carried out in accordance with this Policy or in accordance with a consent granted under the Act in relation to development carried out in accordance with this Policy –

(a) section 37 of the Strata Titles Act 1973; and

(b) any agreement, covenant or instrument imposing restrictions as to the erection or use of buildings for certain purposes or as to the use of land for certain purposes,

to the extent necessary to serve that purpose, shall not apply to the development.

(2) Pursuant to section 28 of the Act, before the making of this clause –

(a) the Governor approved of subclause (1); and

(b) the Minister for the time being administering the provisions of the Strata Titles Act 1973 referred to in subclause (1) concurred in writing in the recommendation for the approval of the Governor of that subclause.

[cl 13 renumbered Gaz 41 of 26 February 1988]

[The next page is B 20,337]

Further to your letter of 22/12/93, I am writing to you to request an extension of time for the lodging of submissions objecting to this development for the following reasons.

- 1) I understand that this development application (DA) was lodged on the 21/12/93 and that a notification of the DA was placed in the Northern Star newspaper on 22/12/93.
- 2) I further understand that a much larger amended DA was delivered to the Council on the afternoon of 23/12/93, a time when the vast majority of Council staff (including the Planning Department) had been granted a half-day holiday.
- 3) I note that the Council offices were closed from the afternoon of 24/12/93 to 4/1/94, and that the public had very a limited access to the DA for a period of 2 weeks after it was lodged.
- 5) I further understand that the applicant developers have placed an embargo on whole or part of the DA, so as to prevent members of the public from obtaining their own copy for detailed scrutiny.
- 6) As this document is nearly 200 pages long, it will necessarily result in many potential objectors taking a much longer time to adequately consider the DA.
- 7) The actions of the applicant developers would appear to indicate a lack of consideration for other members of the community and would also appear designed to limit the potential for objections to their development. It would be well known that many families would be out of the district for the period of the school holidays.

In view of these circumstances, I request that Council re-advertise the DA to notify the public that an amended DA has been submitted and extend the closing date for submissions by two (2) months until 24th March 1994.

The General Manager/Chief Town Planner  
Lismore City Council  
43 Oliver Ave.  
Goonellabah N.S.W. 2480

Jonathan, Theana and Others  
P.O. Box 1029  
Lismore N.S.W. 2480  
Ph. 880 176  
16.1.94

Dear Sir,

We refer to your letter MRS:MR DA 93/754, dated 10.1.94. It was incorrectly addressed and sent to P.O. Box 1020 (c.f. 1029), Lismore. We received it on 15.1.94 and deem the delay to be pertinent to the two weeks notice given for us to provide additional information pursuant to cl.32(1) of the E.P. & A. Regulation 1980.

In response to your requests we advise the following:

### **1. Location of Roads, Dwelling and Water Resources.**

1.1 "proposed internal roads" are effectively in place already. These tracks have been installed to facilitate access throughout the property for the purpose of bushfire management, weed control, general agricultural use and re-forestation. It is impractical to place pegs in the centreline since these tracks in some places are one vehicle-width. Since the tracks are already in place and some pegs are at 30m. to 50m. intervals to the left side of the tracks as vehicles drive into the property, we plan to practicably comply to the request to peg at 20m. intervals to the left gutter of the tracks. An average width of 3m. to the right of these pegs can be inferred.

1.2 All dwellings sites are already pegged and numbered. The Geotechnical Report provided in the copy for public exhibition shows photographs of this fact. Coloured flagging is being added.

1.3 Two pegs indicating dams D1 & D2 are already in place. See photograph in public exhibition copy. The remaining 3 are being pegged within the two weeks period notified. The three known spring sites are similarly being pegged. Access to the dam sites is already indicated on the "MAP SHOWING INTERNAL ACCESS PLAN", Appendix 5. Information supplied in the Development Application (DA), P. 18, line 4 of the first paragraph, Water Supply states that "several dams collectively holding reserves of 10 megalitres are planned". Until such time as these 5 dams are installed it is difficult to specify the precise holding capacity of each. On line 5. *ibid.*, the flow rate has been stated as "100 litres per day". This equates to an hourly rate of 4.17 litres. It has been observed that this rate increases following rain, and yet remains flowing after many weeks of hot dry weather. An assessment period of 16 months, from 22.9.92 - the date on which the property was purchased by the Applicants - is the basis of this information. Information is currently incomplete on the other two springs indicated on Appendix 7 (amended).

Extra note : We are informed that the bore mentioned in the DAIRY REPORT of the DA produces 800 litres per hour. It can be inferred that a similar flow rate may occur from any number of bores drilled on the subject property. Bores can be drilled if and when water reserves in dams and from spring tappers are found to be insufficient.

### **2. Geotechnical Information**

2.1 "written, signed confirmation...verifying...maps..." is being provided by early reply from Kieren Byrne and Associates. Note: the copies of the "TEST SITE PLAN" supplied with the Geotechnical Report have been approved by Kieren Byrne for inclusion in his Report.

2.2 A "certified copy" of the plan relating to dam sites is similarly being supplied. Note: the Appendices 5 & 7 were deemed to be sufficient for this purpose when the DA was submitted. These were verified by Kieren Byrne & Associates when these maps, prepared by us, were submitted to him for comment.

### 3. Consent of owners of the land.

We have been advised by the Chief Town Planner that consent of owners is required before Development approval. We are arranging for the two outstanding signatures to be provided before approval. Please advise of any regulation that requires the consent of *all owners*. The DA is signed by 12 of the 14 Applicant/Owners *by way of* the Annexure Sheets Pps. (v) & (vi).

### 4. Other Matters

4.1 In our view, 2 complete copies of the entire DA and 5 further copies of an Abridged DA are sufficient for Council's and Statutory Authorities' purposes. Please advise of any statute/regulation which guides us on this point.

4.2 Your comments are noted with thanks, and concurrence.

We now refer to your letter MRS:MR:DA/754 dated 11.1.94.

1. We thank you for the information supplied referring to S. 86 of the E.P. & A. Act 1979. We applaud your readiness to assist in this matter. We acknowledge that "extracts from and copies thereof" the DA is a public right.

We note with great interest that 'though the public is seen to lack opportunity to inspect the DA for 11 days over the Christmas/New Year period while the Council is closed, a copy of the DA placed at closing time on the Development Control Planner's Desk at 4.30 pm. on 23.12.93 "was taken by a landowner in the vicinity of the proposed development" the very next morning - 24.12.93 - within 3 hours of Council opening! It is quite clear that the public has availed itself of the opportunity to scrutinise the DA since 24.12.93 - not 4.1.94 as your letters of 24.12.93, 10.1.94 & 11.1.94 suggest. Who paid for this copy to be supplied to this landowner? Did Council charge the 50c per page for this copy to be taken? Please answer these questions by early reply.

The Applicants' letter of 24.12.93 was handed to the receptionist at 11.30 am. on that date together with 4 *Abridged* copies of the DA and two *complete* copies - one for the Development Control Planner and one in an arch file, loose leaf with plastic jackets for public exhibition. These six copies accurately reflect the final draft of the DA, known as DA 93/754.

2.1 Thank-you for your prompt answer.

2.2 The number of days of extension is 11 days. The rejoinder that it is "nine(9) additional days", though a minor point, is indicative of the inaccuracy that shakes our confidence in the adequacy of Council to handle this DA in a correct, professional way. The original public exhibition period was 34 days, and this has been extended to 45 days. This is far in excess of the 28 days mentioned in the letter of 10.1.94, cl.4.2., and by virtue of the statement in the last paragraph of the letter of 11.1.94, "...the application is somewhat similar to DA 93/112", this extension is un-warranted. Please explain why 45 days is determined for public exhibition. As mentioned under 1. above, a certain member of the public has had access to a copy of the DA since the morning of 24.12.93. We are well aware of how the public in the Jiggi area handled the DA 93/112 - and we infer that *many members* of the public have had access to this DA since 24.12.93.

We acknowledge the principle of "open government". We further note that extending the statutory processing period may exacerbate the issues associated with this DA.

Many of the issues connected to DA 93/112 arose outside of this Development. This DA is again at risk of being manipulated by various interested parties into being a political football with tags like "inequitable rating, rural slums, loss of rural amenity, issues of dual occupancy, and de facto subdivision". All of these issues are yet to be shown as relevant and applicable to any part of this DA. Prejudice against "different" people, lifestyles, choices and methods of development, low-cost land and low-cost housing options, and "entrepreneurial Developers" (with a capital D) and "land Speculators" was evident in submissions and comments from the public during the assessment of DA 93/112. Is prejudice relevant to this DA?

Thank-you for the extract from one public submission asking for a 3 month exhibition period! This DA has been effectively available to the public since 3.3.93 since DA 93/112 is its basis. If DA 93/754 is determined on 15.2.94, as indicated, 11.5 months have been available for public scrutiny of and comment on this Development.

2.3 Council was given one copy of the current DA at 10.05 am. and six copies of the same at 4.00 pm. on 21.12.93. Whether the Development Control Planner received these is a moot point because Council Staff gave back to us six copies at our request on 24.12.93 when we handed over six copies of our amended draft. One of the original 7 copies was retained and placed in the Council's records.

2.4 Noted.

2.5 Council received 6 additional copies of the amended DA : one for the Development Control Planner, one for public exhibition and 4 abridged copies for Statutory Authorities. Thank-you for extending the 4 abridged copies to 6 complete copies for Statutory Authorities.

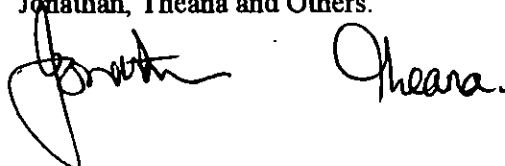
3. The timetable provided also "illustrates that a substantial part of the delay in processing time was due to delays..." by Council.

Our request that the Chief Town Planner and all Councillors inspect the property, and our invitation to contact us for this purpose has been over-looked in your letter of 11.1.94 in response to the Applicants' letter of 5.1.94. Please convey the same to these parties.

We thank you for your prompt response to the letters of 24.12.93 and 5.1.94.

With Sincerity,  
Jonathan, Theana and Others.

Ref:DCPLET2.WRI

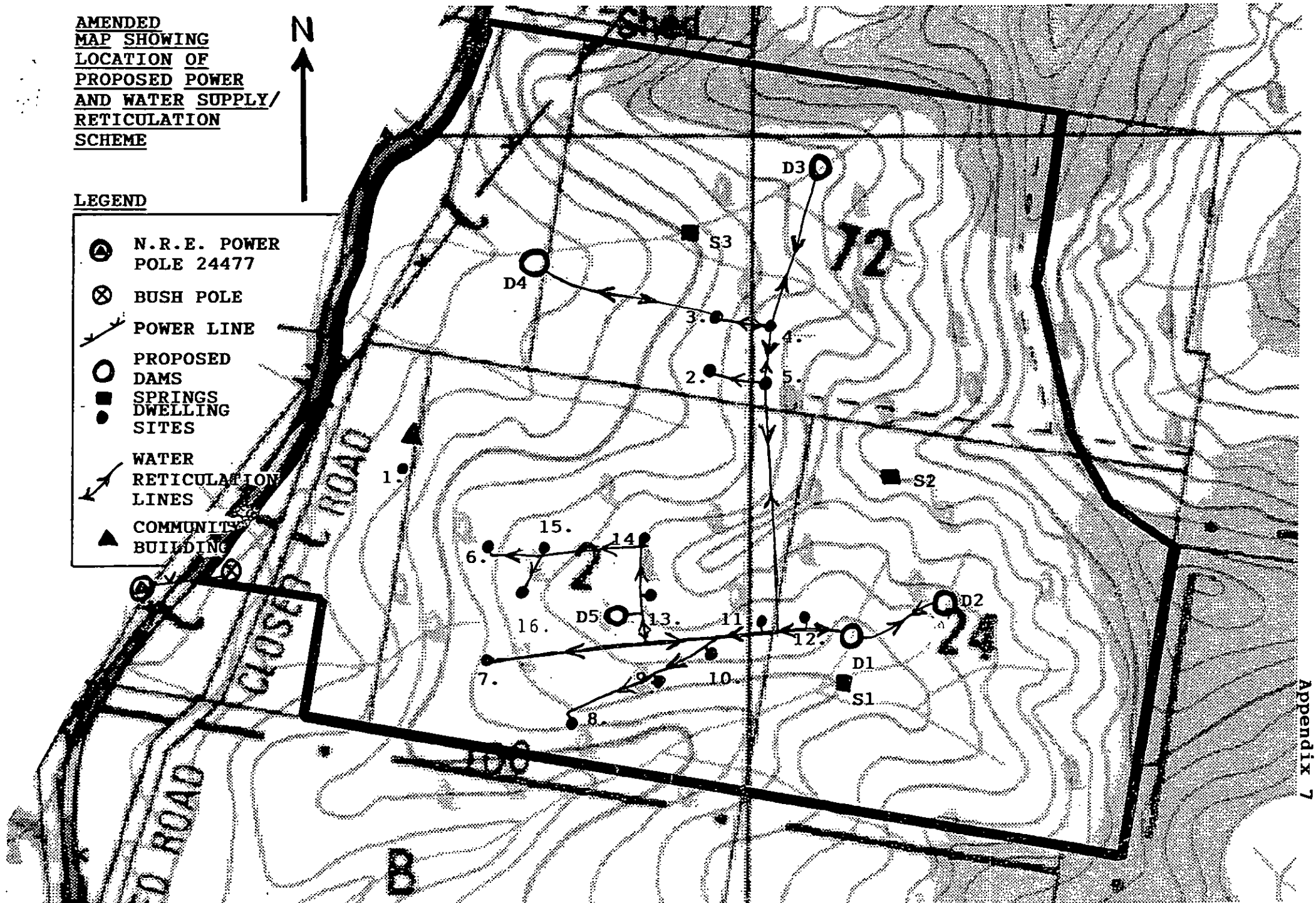




AMENDED  
MAP SHOWING  
LOCATION OF  
PROPOSED POWER  
AND WATER SUPPLY/  
RETICULATION  
SCHEME

LEGEND

- ⊙ N.R.E. POWER POLE 24477
- ⊗ BUSH POLE
- POWER LINE
- PROPOSED DAMS
- SPRINGS
- DWELLING SITES
- WATER RETICULATION LINES
- ▲ COMMUNITY BUILDING



# *The Council of the City of Lismore*

*Council Chambers  
43 Oliver Avenue, Goonellabah, N.S.W.*

TELEPHONE (066) 25 0500  
FACSIMILE (066) 25 0400

P.O. BOX 23A,  
LISMORE, 2480  
DX 7781

ALL COMMUNICATIONS TO  
GENERAL MANAGER

IN REPLY PLEASE QUOTE

**MRS:JAC: DA93/754**

CONTACT **Mr Scott-250565**

**Planning Services**

**December 24, 1993**



Jonathon, Theana & Others  
C/- PO Box 1029  
LISMORE 2480

Dear Sir/Madam

**DEVELOPMENT APPLICATION 93/754  
MULTIPLE OCCUPANCY 136 DAVIS ROAD, JIGGI**

Further to Council's letter of December 23, 1993, in which Council gave notice of extension of statutory processing times and period of exhibition please be advised that Council is extending the period of exhibition to February 4, 1994.

The period of exhibition and statutory processing time is being extended for the following reason:

- 1 The amended applications have not been received by Council in sufficient time to refer the applications to various statutory authorities prior to Council closing business over the Christmas holiday period, and that persons notified of the exhibition period will not be able to view the application until January 4, 1994.

Please be advised that Council will be closed until January 4, 1994, and that the amended application will, on that date be referred to the statutory authorities with whom Council usually consults.

Should you have any further enquiries regarding this matter, please do not hesitate to contact Mr Malcolm Scott at Council's Administration Centre, Oliver Avenue, Goonellabah, on telephone 250500, between the hours of 8.30am and 10.00am, Monday to Friday.

Yours faithfully

PT Muldoon  
GENERAL MANAGER

per:-

A handwritten signature in black ink, appearing to be 'PT Muldoon', written over the printed name and title.

Ref: COUNTEXT.WRI  
The General Manager  
Lismore City Council  
43 Oliver Ave.,  
Goonellabah  
N.S.W. 2480

Jonathan, Theana and Others  
P.O. Box 1029 Lismore  
N.S.W. 2480  
5.1.94

Development Application: 93/754

Dear Sir,

We refer to your letters MRS:JAC 93/754 dated 23.12.93 and 24.12.93. We advise the following:

1. The penultimate paragraph of the letter dated 23.12.93 indicates that "the period in which the statutory processing time will commence is that date upon which Council receives the amended application".
  2. Since the amended application was submitted on 23.12.93 at 4.30p.m., the first paragraph of the letter dated 24.12.93 is clearly inconsistent with 1. above, viz. "...Council is extending the period of exhibition to February 4, 1994".
  3. We received the advice of this extension of Council's closure until Jan. 4 on 5.1.94 when we checked the P.O. Box. Since the letter indicates that it was written on 24.12.93 please advise why it took 12 days (allowing for the possibility that it was in the P.O. Box on 4.1.94: the Box was checked late on 31.12.93) for us to receive this advice.
  4. We note that in the letter of 23.12.93 notice was given in the matter of extending the statutory processing time. Where is such notice about extending the period of exhibition as stated in the first paragraph of the letter dated 24.12.93? We note too that this extension may be for three days: 21.12. to 24.12 - hardly the eleven days that have been arbitrarily added.
  5. We are operating on the timetable as indicated in the Northern Star advertisement, 22.12.93, P. 8 bottom, and in the absence of adequate reason(s) why to vary this, ask that Council does the same.
- We state that the extension as advised is unnecessary, arbitrary and unreasonable for the following reasons:
1. Your "reason" given in the letter dated 24.12.93 states a fact. This is, in our view, inappropriate as a reason for this arbitrary extension.
  2. The statutory authorities could have been sent copies of the "amended applications" on 24.12.93 just as we were sent the letter dated 24.12.93.
  3. The public was able to view the Development Application submitted on 21.12.93 from the morning of 22.12.93 when it was advertised to this end.
- 1.

4. The Development Control Planner received six copies of the Development Application at 4.00 p.m. on 21.12.93.
5. We were informed by a Councillor (who can be named) on 29.12.93 that Council was "open for business with a skeleton staff" - thus allowing "persons notified of the exhibition period" access to the Application on this and subsequent days also.
6. Council's advertisement in the Northern Star, 22.12.93, indicated that DA 93/0754 was available for public exhibition on that date and until 24.1.94.
7. Council received and entered into the record the Development Application which it identifies as DA 93/754 on 21.12.93. There was sufficient time from this date for "persons notified of the exhibition period" to view DA 93/754 prior to 4.1.94 - in fact it was available for three days before Christmas and three days before the New Year for the Development Control Planner to take action with regard to "various statutory authorities" and for "persons notified" to see it in Council.
8. We note that it took Council ten days to advertise DA 93/112 submitted on 3.3.93. Based on this experience we suggest that "various statutory authorities" and "persons notified of the exhibition period will not be able to view the Application until January 4, 1994" because of Council's action or lack thereof.
9. We note that the penultimate paragraph of the letter dated 24.12.93 indicates "that the amended application will...be referred to the statutory authorities".... on January 4, 1994. This advice begs the question: What is the problem, then? The paragraph above merely states the same. How does it constitute a reason for the extension? Do the "statutory authorities" require more than the remaining 21 days of the exhibition period to respond to a Proposal with which they are already familiar?
10. We note the way in which DA 93/112 was handled by Council from 3.3.93 until its Determination on 15.6.93. We are aware that DA 93/754 may be handled in a similar way. This is one reason why we ask for a brief processing period.
11. We are aware of the statutory processing period (40 days) within which Council is to Determine this Application. The arbitrary extension puts this process well outside this period. Add to the 40 days, the extra week for viewing the Business Paper, and the extra days for Council's scheduled meeting (February 15), and it is a total of 57 days. It appears that Council is either unable or unwilling to process DA 93/754 in the statutory period. A question of competency arises here. We recall that it took Council 105 days to Refuse DA 93/112. DA 93/754, although new, is very similar. It is well known to the public affected by it. This extension is unnecessary, arbitrary and unreasonable.

We seek an explanation as to why a period of 34 days is decided for public exhibition in the first instance - and now an extra 11 days extension is decided upon without appropriate reason(s) being given. As stated above, the letter of 24.12.93, point 1 makes a statement of fact. Where is the reason for the extension? What mandate does Council have to make this exhibition period span 45 days? Please cite the relevant resolution(s) or regulation(s) if any exist(s).

We seek an explanation as to why a fee of \$250.00 is charged for this new Proposal. Does this reduced charge confer a reduced status, or in any way affect the Proposal?

We recognise the Lismore City Council as the Determining body in this matter in so far as it demonstrates that it is competent and willing to handle DA 93/754. We ask that it be determined within the statutory processing period or within reasonable time thereafter. We ask for Council's assistance in properly achieving this.

The fourteen Applicant/Owners have been delaying full development of the property since 22.9.92 (16 months). We now are ready to expedite the Determination of DA 93/754.

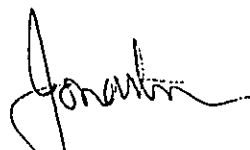

Please advise any pertinent details that may affect the processing of this Proposal.

We request that the Chief Town Planner and all the Councillors inspect the property at 136 Davis Rd., Jiggli to ascertain for themselves that this Development is a responsible and feasible use of this land. Accordingly we invite the above-mentioned personnel to contact any or all of the following Applicant/Owners to arrange for an on-site inspection which is convenient for all involved before determination of this Proposal: Alan Doohan - 223 411, Vyvyan Stott - 018 663 431, Jonathan - 880 176, Theana - 880 176.

Please be advised of the correct spelling of the name, Jonathan. Please delete the C/- from the address.

Finally, we wish it to be known that we informed neighbours of our intentions for the property in July 1992 (18 months ago). The response was generally receptive at that time. We allowed copies of DA 93/112 to be available to interested members of the public. The result was an organised opposition through numerous submissions of objection and phone calls to Council and Councillors. We see the wisdom of an expeditious Determination of this now well known Proposal in order to contain the subjective reactions displayed by many parties against the original DA 93/112.

With Sincerity,

   
Jonathan, Theana and Others.

# *The Council of the City of Lismore*

*Council Chambers  
43 Oliver Avenue, Goonellabah, N.S.W.*

TELEPHONE (066) 25 0500  
FACSIMILE (066) 25 0400

P.O. BOX 23A,  
LISMORE, 2480  
DX 7761

ALL COMMUNICATIONS TO  
GENERAL MANAGER

IN REPLY PLEASE QUOTE

MRS:JAC: DA93/754



CONTACT Mr Scott-250565

.....Planning Services

December 23, 1993

Jonathon Theana & Others  
C/- PO Box 1029  
LISMORE 2480

Dear Sir/Madam

**DEVELOPMENT APPLICATION NO 93/754  
MULTIPLE OCCUPANCY LOT 41 DP 802597 136 DAVIS ROAD  
JIGGI - SUBMISSION OF AMENDED PLANS**

Council acknowledges receipt of the above development application.

Council refers to recent telephone discussions between yourself and Council's Planning Officer Malcolm Scott, regarding provision of additional information and an amended development application.

Please be advised that Council has no objection to the receipt of the additional information in accordance with S77(6) of the Environmental Planning & Assessment Act and Clause 33 of the Environmental Planning & Assessment Regulation. Council in accordance with Clause 33 of the Regulation requires that written documentation be provided which clearly indicates the nature of the amendments. This should be annexed to the amended application.

Council also advises that the period in which the statutory processing time will commence is that date upon which Council receives the amended application.

Should you have any further enquiries regarding this matter, please do not hesitate to contact Mr Malcolm Scott at Council's Administration Centre, Oliver Avenue, Goonellabah, on telephone 250500, between the hours of 8.30am and 10.00am, Monday to Friday.

Yours faithfully

PT Muldoon  
GENERAL MANAGER

per:-

A handwritten signature in dark ink, appearing to be 'PT Muldoon'.

The General Manager  
Lismore City Council  
43 Oliver Ave.,  
Goonellabah N.S.W. 2480

Jonathan and Theana  
and Others of the Jiggi  
property,  
P.O. Box 1029  
Lismore N.S.W. 2480

Ref: COUNCLET.WRI

24/12/93

In response to the letter MRS:JAC:DA93/734, dated 23/12/93, we supply you with the following information:-

1. The D.A. submitted 21/12/93 was incomplete due to a cut-off time for advertising during this Christmas-New Year break (10:00am Tuesday 21/12/93)
2. Amendments made to the first draft (submitted on 21/12/93) include some typographical corrections on pages (viii), (ix), 7(f), 11, 12, 15 - 18 and 20 - 24; re-drafting the Table of Contents, including the Table of Appendices and addition of references to Appendices 7 and 9 - 16 in the text.
3. Other additions include Appendices 9 - 16, and extra reports on dams, roads and the Community Building in the Geotechnical report.
4. Four copies of the D.A. are included for Council Staff use.
5. One copy in Leven Arch File is included for Public Exhibition until 24/1/93.
6. One copy was placed on M. Scott's desk at 4.30p.m. Dec. 23.
7. All copies of this D.A. are to be kept as complete units.
8. Permission to copy any original text and plans viz: pages (i) - (ix), 1 - 26 (this includes the Centre for Coastal Management Report and the Geotechnical Report), and Appendices 2(b) - 8(b) inclusive, is expressly withheld.
9. Extra copies may be made available on request to the Applicant and only to facilitate the processing of this D.A. for Council Staff.
10. Please acknowledge this letter with reference to #8 & #9 at your early convenience.
11. Please keep the copy for Public Exhibition in a secure situation to prevent unauthorised copying of the text and plans.

Thankyou for your assistance in this matter.

Yours In Truth,

  
Jonathan and Theana for all Applicants.

Note: Additional corrections occur in pages (i), (ii), (iv), (vii) and 1 & 3.