

DA 2015/458 – Duraplas – 9 Robb Street, Alstonville

Applicant	Geolink
Property	Lots 1 & 2 DP 707837, Lot 1 DP 817406, Lot 11 DP 1059499, No's 9, 11 & 12 Robb Street, Russelton
Proposal	The Development Application seeks development consent for subdivision by way of a boundary adjustments and allotment consolidation of the subject lands and for the use of part of Lot 1 DP 817406 for the storage of tanks.
Effect of Planning Instrument	No's 9 & 11 Robb Street are zoned IN1 General Industrial under the provisions of the Ballina LEP 2012 and No 12 Robb Street is zoned 7(i) Environmental Protection (Urban Buffer) under the provisions of BLEP 1987.
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

It is proposed to undertake a boundary adjustment subdivision between Lot 1 DP 817406, Lot 11 DP 1059499 and Lot 2 DP 707837 as shown in the following proposed subdivision plan. The proposal will also consolidate Lot 1 DP 707837 into the enlarged Lot 2 DP 707837. The application also seeks consent for the use of part of Lot 1 DP 817406 (proposed Lot 1) for the storage of tanks ancillary to the Duraplas use of the industrial land to the west.

The existing lot layout is shown below:



The proposed altered lot layout is shown below:



Proposed Lot 1 will contain an existing industrial building (Duraplas Office), the ancillary tank storage area which has been used by Duraplas for an extended period of time, the existing dwelling currently on Lot 1 DP 817406 which will be decommissioned as a result of this application.

Proposed Lot 2 will be enlarged in area so that the buffer between the industrial estate and the surrounding land uses (which are mainly rural) will be maintained and improved by separating the long standing use of Lot 1 DP 817406 from the surrounding rural land uses.

Proposed Lot 3 will effectively be reduced in area to 14.6ha and will no longer have a dwelling located on the lot. It should be noted that this lot will maintain a dwelling entitlement as the proposed lot will be in excess of the minimum lot size of 13ha and will be a lawfully created Lot pursuant to BLEP 1987.

History

The existence of the dwelling on Lot 1 DP 817406 pre-dates the creation and rezoning of the subject industrial estate to the north and west. Following the approval of an intensive industrial use on Lot 53 DP 700227, land-use conflicts were created between the industrial use and the subject dwelling.

Following the receipt of noise complaints from the occupiers of the dwelling, an agreement was made between the two property owners for Duraplas to take occupation and lease of the dwelling and the area that is currently used for the storage of tanks.

Whilst this agreement addressed the land-use conflicts created by the proximity of the dwelling to intensive industrial use, it did not address the unlawful use of the land for the storage of tanks or the ability for the owner of Lot 1 DP 817406 to occupy a dwelling in conjunction with the agricultural use of the subject lot.

The site

The subject site is a mixture of industrial uses being the Duraplas Head Office, ancillary rain water tank storage area and rural in the form of the existing Macadamia Farm as well as containing part of the industrial estate's landscape buffer.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Applicable Planning Instruments

The proposed development has been assessed under the heads of consideration in Section 79 (C) of the Environmental Planning and Assessment Act 1979. The proposal has been assessed as being generally compliant with the BLEP 2012, Council's DCP 2012, BLEP 1987 and the remaining matters listed within Section 79 (C) of the Act.

Environmental Planning Instruments (EPI's) and permissibility

The subject site is zoned under both Ballina Local Environmental Plan 2012 (BLEP 2012) and Ballina Local Environmental Plan 1987 (BLEP 1987) with the following zones applicable to each of the existing lots:

Lot 2 DP 707837 – IN1 General Industrial (BLEP 2012)
Lot 1 DP 707837 – IN1 General Industrial (BLEP 2012)
Lot 1 DP 817406 – 7(i) Environmental Protection (Urban Buffer) (BLEP 1987)
Lot 11 DP 1059499 – RE1 Public Recreation (BLEP 2012)

In relation to permissibility of the various uses on the subject lots, the following clarification is provided:

- Lot 2 DP 707837 is zoned IN1 and contains the Duraplus Head Office which is associated with the intensive industrial use of Lot 53 DP 70027, the use is existing and approved.
- Lot 1 DP 707837 is zoned IN1 and is currently being used for car parking and storage by Duraplus, the use is existing and permissible under the zoning.
- Lot 1 DP 817406 is zoned 7(i) and is currently used for general agriculture which is permitted without consent and for the storage of water tanks which is listed as being a prohibited use in the zone under the provisions of BLEP 1987. Despite the fact that the use of this land for the storage of water tanks is listed as being prohibited in the 7(i) zone of BLEP 1987, the use is considered to be permissible under the provisions of State Environmental Planning Policy No 33 – Hazardous and Offensive Development (SEPP 33).

Clause 9 of SEPP 33 states:

"9 Storage facilities

A provision of an environmental planning instrument which prohibits the carrying out of development for the purposes of, or purposes which include, a storage facility (however the storage facility may be described or referred to in the instrument) on the ground that the storage facility is offensive or hazardous has no effect unless the storage facility is a hazardous storage establishment or an offensive storage establishment as defined in this Policy."

The use of the land for the storage of tanks is best defined as a 'storage facility' and in this instance the storage facility is used to store goods created/manufactured by a

hazardous and offensive development, which is the manufacturing of plastic water tanks on Lot 53 DP 700227. Whilst the process of manufacturing the water tanks is considered 'hazardous and offensive' for the purposes of SEPP 33, the end product being the water tanks are not hazardous or offensive and therefore the subject storage facility is not a hazardous storage establishment or an offensive storage establishment as defined by SEPP 33.

The primary objective of the 7(i) zone is to:

'create a rural buffer in the locality of Alstonville and Wollongbar and to prevent development of an urban character within any part of the zone which is likely to be seen by existing or likely future residents of the villages of Alstonville and Wollongbar or from a major road in the locality'.

The proposed development for the purposes of a 'storage facility' will not be visible from the existing or likely future residents of the villages of Alstonville and Wollongbar or from a major road in the locality, as such the proposal is considered to be consistent with the primary objectives of the 7(i) zone.

Pursuant to clause 9 of SEPP 33, the proposed use of the land for a storage facility is considered to be permissible with the consent of Council in the 7(i) zone.

- Lot 11 DP 1059499 is zoned RE1, however no change of use is proposed to this allotment.

Density/Minimum Lot Size Provisions

As discussed above, the allotments fall under three different zones and two different LEP's. As such, various lot sizes and boundary adjustment provisions apply. For simplicity purposes, the assessment in relation to minimum Lot size has been split into three different sections as shown below:

Proposed Lot 1

Proposed Lot 1 is 7774m² in area and will contain two different zones with approximately 1000m² of IN1 zone under BLEP 2012, with the remainder being 7(i) under BLEP 1987. The IN1 part of the proposed lot has a minimum 1000m² lot size pursuant to BLEP 2012 which the proposal complies with. The 7(i) part of the proposed lot is subject to clause 11 of BLEP 1987 which permits minor adjustment to common property boundaries subject to Council being satisfied that any such adjustment will not lead to:

- (i) *the creation of any additional allotments or additional dwelling entitlements or both, and*
- (ii) *a substantial change to the land area contained in each allotment or a substantial change to the configuration of each allotment, and*
- (iii) *an increase in the size of an allotment that would provide in the future for the creation of additional allotments or additional dwelling entitlements, and*
- (iv) *an outcome contrary to the terms of any development consent granted in respect of any of the land concerned, and*
- (v) *an increase in the likelihood of potential for land use conflict,*

The proposal will not lead to any of the above scenarios and is also not a substantial change to the lot area contained in each of the allotments. It is considered that Council is able to consent to the proposed boundary adjustment without the need to consider a SEPP 1 objection.

Proposed Lot 2

Proposed Lot 2 is 12,832m² in area and will contain two different zones with approximately 10,962m² of RE1 zone under BLEP 2012 with the remainder being 7(i) under BLEP 1987. There is no minimum Lot size in relation to the RE1 zoned portion of the lot and therefore the proposal is fully compliant with BLEP 2012. The 7(i) part of the proposed lot is subject to clause 11 of BLEP 1987 which permits minor adjustment to common property boundaries subject to Council being satisfied that any such adjustment will not lead to the items listed above.

The proposal will not lead to any of the above scenarios and is also not a substantial change to the lot area contained in each of the allotments. It is considered that Council is able to consent to the proposed boundary adjustment without the need to consider a SEPP 1 objection.

Proposed Lot 3

Proposed Lot 3 is 14.61ha in area and is completely zoned 7(i) under BLEP 1987. Clause 11 of BLEP 1987 states the following in relation to subdivision of land zoned 7(i):

- “(3) *The council may consent to the subdivision of land referred to in subclause (2) (a) where the area of each allotment to be created by the subdivision is not less than 13 hectares.*
- (4) *In deciding whether to grant consent under subclause (3) the council shall consider:*
- (a) the area and quality of land and its potential agricultural productivity,*
 - (b) the likely effects, both economic and otherwise, that the proposed subdivision will have on agricultural industries in the area and the resources employed by or in connection with those industries,*
 - (c) the likely effects, both economic and otherwise, that the proposed subdivision will have on the use and development of other land and resources in the area,*
 - (d) whether there are any reasonable alternatives to the proposed subdivision in the circumstances,*
 - (e) the effect of the existence of, or potential to erect, a dwelling,*
 - (f) the cumulative effect of similar proposals if consent is granted, and*
 - (g) the likelihood of the proposed allotments remaining available for agricultural use.*
 - (h) the adequacy of the water supply to the proposed allotments.”*

As proposed Lot 3 is greater than 13ha in area but less than 20ha in area, Council must consider 4(a) – (h) listed above. In this instance the area that is proposed to be boundary adjusted away from proposed Lot 3 is not currently used for any type of agricultural purposes, as it has been used for the storage of water tanks ancillary to the industrial use to the west for an extended period of time. In addition to the fact that this area is not currently used for agricultural purposes, it is also minor in terms of area and only results in a 5% decrease in land area. Overall, the proposal is considered to achieve full compliance with items 4(a) – (h) listed above.

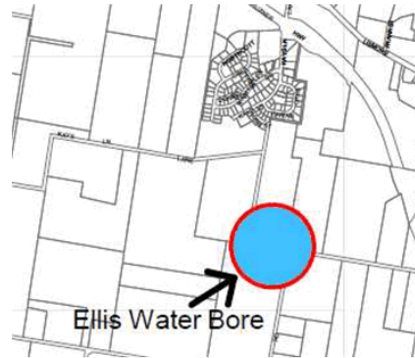
Dwelling entitlements and future dwelling construction

Lot 1 DP 817406 currently has a dwelling entitlement due to the fact that the lot is greater than the minimum lot size of the zone and currently contains a lawfully erected dwelling. The existing dwelling will form part of proposed Lot 1 and will be decommissioned as a result of this application, proposed Lot 3 will retain its dwelling entitlement as the Lot will be greater than the minimum Lot size (13ha). There are numerous suitable locations for a dwelling to be erected on proposed Lot 3 that are of sufficient setback from the industrial estate and neighboring agricultural uses so that no unreasonable land use conflicts would be created.

The proposal will not create any additional dwelling entitlement to that which currently exists (one) and will provide a lot that is of a suitable size to contain a future dwelling.

Sewerage Management of future dwelling

The preference for any new dwelling would be to connect to reticulated sewer. However if this cannot be done then there are several constraints that exist that may impact on the future installation of an On Site Sewerage Management System (OSSMS). Firstly Council's Ellis Road drinking water bore is located immediately south of the subject property and there is a 250 metre radius exclusion zone for OSSMS from town drinking water bores, see map below. This exclusion area affects a large section of the southern end of the subject property.



Secondly there is a waterway transecting the centre of the subject property and buffers exist in relation to separating OSSMS and waterways.

If a OSSMS is required to be installed in relation to the construction of a new dwelling an experienced OSSMS consultant should be engaged early to address these issues.

This matter can be appropriately dealt with through conditioning and the requirement for a section 88B restriction to title. Suggested condition;

A Restriction-as-to-user, in accordance with Section 88B of the Conveyancing Act 1919, is to be placed on the title of the larger agricultural lot (being proposed Lot 3 of the stamped plans dated XX) stating that any proposed dwelling located on this lot, will be required to connect to Council's reticulated sewer system. If this connection is not reasonably able to be achieved a suitably qualified OSSMs consultant shall be engaged to design a suitable OSSM having consideration for the site constraints including the 250 metre radius exclusion zone to the Ellis Road town drinking water bore.

Public Exhibition

Details of the proposal were notified in writing to adjoining and nearby property owners with two submissions being received opposing the proposal.

The objections refer to:

- The current occupiers of 23 Owens Crescent have enjoyed access to the rear of the property for maintenance purposes, they would greatly appreciate retaining this advantage if Council was to approve the subject development application.



The area referred to for maintenance purposes is shown in red above. There is currently no formal access arrangements over Council owned land for maintenance purposes. There is however common law which permits a property owner to obtain access over neighbouring land for maintenance purposes as long as a minimum of two days notice is provided. The grounds for objection are not considered to be such that would impact on the determination of the development application.

- The current tenant of the existing dwelling on Lot 1 817406 provided the following reasons for objection:

"I came home today, Monday 23rd November, to find a DA out the front driveway. I was wondering as a long term (7yrs) tenant of the house on this property, why I was not notified that my home will be taken away from me? Should me landlord to whom I pay my rent, John Fleming of Duraplas or Ballina Shire Council have had the decency to advise me that I am to become homeless? I pay my rent and never complain about the excess noise that I have constantly put up with for 7 years. As the long standing tenant common decency and good morals should have been used in this situation. I strongly object to this development and the underhanded deceitful way in which it has gone ahead. In my opinion a tenant has rights and I, strongly, believe that my rights have been abused by John Fleming and Ballina Shire Council.

Comment: This objection is purely a civil matter between the property owner and the subject tenant. The proposal was notified to surrounding properties for a 14 day period commencing 18th November 2015 in accordance with DCP 2012. It is not clear how Ballina Shire Council has been misleading in relation to this matter as all correct procedures have been followed.

Conclusion

The application seeks consent to undertake a boundary adjustment subdivision between Lot 1 DP 817406, Lot 11 DP 1059499 and Lot 2 DP 707837 as shown in the proposed subdivision plan. The proposal will also consolidate Lot 1 DP 707837 into the enlarged Lot 2 DP 707837. The application also seeks consent for the use of part of Lot 1 DP 817406 (proposed lot 1) for the storage of tanks ancillary to the Duraplas use of the industrial land to the west.

The proposal is compliant with BLEP 2012, DCP 2012 and achieves compliance with BLEP 1987 through the provisions of SEPP 33. The proposal will also address a long standing land use conflict between the intensive industrial use and the neighbouring dwelling while also addressing the long standing illegal use of the land for storage purposes.

The following options are available to Council in the consideration of this application, which are:

1. Refuse the application
2. Approve the application subject to conditions

For the reasons outlined in the report the recommendation is for approval.

RECOMMENDATION

That Development Application 2015/204 be **APPROVED** subject to standard conditions as well as the following:

1. The existing dwelling on Lot 1 DP 817406 is to be decommissioned prior to the issue of a subdivision certificate to the satisfaction of Council.
2. This consent permits the use of proposed Lot 1 as a storage facility ancillary to the adjacent industrial use. The approved storage facility must at all times be operated ancillary to this use unless further consent is obtained from Council.
3. Prior to the issue of a Subdivision Certificate, a Restriction-as-to-user, in accordance with Section 88B of the Conveyancing Act 1919, is to be placed on the title of the larger agricultural lot (being proposed Lot 3 of the stamped plans dated XX) stating that any proposed dwelling located on this lot, will be required to connect to Council's reticulated sewer system. If this connection is not reasonably able to be achieved a suitably qualified OSSMs consultant shall be engaged to design a suitable OSSM having consideration for the site constraints including the 250 metre radius exclusion zone to the Ellis Road town drinking water bore.
4. Prior to the issue of a Subdivision Certificate, the existing OSSMS on Lot 1 DP 817406 is to be decommissioned and connected to Council reticulated sewerage system.