

## **UPDATES ON DA SINCE LAST MINUTES WERE POSTED (18th March 2016)**

To say things have been hectic on the DA front would be an understatement. Below are top line developments since posting of last minutes.

### **Update on Correspondence from Council**

- Received formal notice of Council's refusal of our Section 96 application. We have 6 months from the date we received the letter (10th March 2016) to appeal in the Land Environment Court. Council's delay in sending out the notice, bought us some more time to decide if we want to lodge an appeal and prepare for same.
- We requested Council review their decision on our S.96. They refused, because we are an integrated development (due to the involvement of the Rural Fire Service in our DA consent). The lawyer confirmed Council are within the law on this refusal.

### **Update on Michael Young, Lawyer:**

- Letter received from lawyer. He read and assessed our S.96 application, Council's response and the gap analysis we prepared giving our rebuttal to Council's response
- Young indicates it would be unusual to allow a development our size have an all-weather access road, notwithstanding the fact that Maria River Road is all-weather
- In order to have a chance in court, we need more road engineer input on why all-weather is suitable and why Council should not apply their usual table of road categories which mandates a Type 3 road for 20-200 vehicle movements per day in their Development Control plan. We need figure out if we can find a road engineer to do this before proceeding with any court action
- An established legal principle is that conditions must be reasonable. The significant and prohibitive cost of Type 3 would be a strong argument that the condition is not reasonable, but not enough on its own. We still need to do better on addressing the point above.
- Young suggested we look at a staged approach, up-grading once we reach a certain number of dwellings. (Note: we did a count we are currently at 35 dwellings).
- He gave a rough estimate of costs to run the appeal as \$14,149. His time costs \$330 per hour and he uses juniors where possible. The estimate allows 1 day for the hearing, 1 day for site inspection, 17 hours preparation, office disbursements, court filing fees of \$1794. We also will need to pay for their out of pocket expenses, e.g. travel and accommodation. We also need to factor in cost of expert witnesses, i.e. road engineer, consultant planner. (Note from us: also have to factor in possibility of Council's costs being awarded against us / the hearing is likely to take place locally with a site inspection)
- We have a conference call scheduled with him Monday to discuss advice received.

### **Update on Liaison with Councillors**

- Peter agreed to ring around Councillors. The first Councillor he spoke to agreed to raise our situation at a Councillors private meeting. Arising from that, a speaking slot was arranged for Council's public meeting 15th March, as Councillors wished to hear the same message, rather than holding individual discussions with us

- Peter made a 5-minute presentation to the Councillors as a public forum speaker. He explained the affordability and feasibility problems with upgrading the road to Type 3, the procedural unfairness issues we experienced and requested a rescission motion. The councillors did not ask any questions. It was a non-agenda item so further discussion could not be held.
- During discussion with Councillors / staff at morning tea the following emerged:
  - There is no appetite amongst Councillors to put forward/support a rescission motion (basically undoing their decision).
  - There is social support for our case/plight. However, councillors are not technical people and rely on the advice of their road engineers
  - The all-weather solution is too far apart from the solution proposed by Council engineers
  - Suggested we meet with Council staff and try to work out a compromise. If that does not happen we should go back to the councillors
- Craig has been in contact with his Councillor contact. The councillor read our S. 96 application. We have made a strong case for all-weather. Does not see Council staff changing their mind. We will have to go to Court if we want all-weather.

#### **Update on meeting with Council Staff 14th March**

- Council Staff in attendance: Robert Scott (Director of Infrastructure), Shane Reinhold (Town Planner), Les Pawlak (Acting Manager Development Assessment)
- Goolawah DA Committee members in attendance: Louise, Peter, Ralph, Mairead
- Council staff reviewed our submissions and considered the situation. Their position is Nevertire needs to be sealed unless we can provide new information to warrant altering their position. Their requirements are driven by the size of the development, traffic generated and impact on Nevertire neighbours
- Robert Scott explained they have a 4-tier road hierarchy. 1. Unmaintained track; 2. Local access, 3. Collector road; 4. Arterial road. Council's position is that Nevertire is now a Collector road due to our development, in the same category as Maria River road.
- Council considered requiring Goolawah to also upgrade Maria River Road but decided it was too onerous and the % of additional traffic the development would add to the road was not sufficient to warrant it
- The traffic volumes on Maria River road warrants sealing it and it would be cost effective over the very long term (80 years). But Council do not have funds and the road has problems with severe curves. Council plans for the next 10 years are only to re-sheet gravel roads, no plans to upgrade gravel roads to seal.
- Council are willing to give us time to do the upgrade of Nevertire and do it in stages. Priority would be residential section.
- Costs of the road up-grade will depend on issues such as drainage, treatment of curve. They are willing to look at design compromises to get the cost of the upgrade down.
- They are willing to meet bi-monthly or monthly to try to work something out.
- They are willing to give us an estimate on using their machinery/manpower to upgrade the road as it is a significant project with community benefit.
- The cattle grid and gate at Maria River Road junction will be removed as part of the upgrade. If cattle keep grazing on the road they will be impounded.

- The grid at Goolawah's boundary can stay, but needs to be moved 20 meters as it is on the Council road.
- Council were not aware of any funding options at present, besides the un-maintained road grant that we accessed in the past, max \$10,000. They advised we try state avenues: strengthening communities grant, building better communities, building better roads, building safer roads. Relevant grant funding criteria: affordable housing, economics (e.g. faster trips, save money, help school numbers, drive economic development), road safety (e.g. reduce accidents), diversify infrastructure / development types, fill void in demographics
- We outlined the procedural unfairness issues we experienced. They did not dispute these. They explained the delay in issuing a determination notice was due to a new computer system glitch.
- They are satisfied with Goolawah's level of cooperation and compliance. They will be coming out to Goolawah to do an audit of our compliance over next couple of months. A report on compliance will be prepared and presented to Councillors in September.
- They want regular updates from us on progress. We need to demonstrate reasonable progress.

#### **Update on Road Engineers**

- Dennis partners who worked on our road design and costings, have declined to do further work on the project
- Roadnet Road engineers who prepared a traffic and road engineering report for our S.96 closed their Port Macquarie Office and now are only based out of Queensland or Sydney
- Trying to establish who is the best person to work with is challenging. There are two tasks: 1) costings and road design options (all-weather, compromise solution; type 3); 2) preparing further arguments/report for a court case or to present to Council staff to argue for an all-weather solution
- Ralph is contacting road engineers to assess who would be available and suitable for the work and at what cost.

#### **Update on neighbourhood consultation**

- Mairead prepared a questionnaire for neighbours
- Ishbel is working on a letter and is willing to talk to neighbours, and will choose a second person to go with her
- DA Committee to get together with Ishbel and finalise wording on questionnaire and letter

#### **Misc Updates**

- Mairead emailed Warwick (lawyer who was helping us deal with Council in 2014/2015) to request a copy of correspondence Council sent to directly to him that is missing from our files and to return our dossier - no response to date, followed up again 17th March
- Bron send her regards from Asia and is keeping up to date as much as internet connections allow, she will be back on the 26th March

## Action Plan

	<u>Option 1</u>	<u>Option 2</u>	<u>Option 3</u>
	<u>Type 3 Road Current DA requirement</u>	<u>Negotiated Seal Road not type 3</u>	<u>Unsealed Road</u>
Road design	A full road design	A full road design incorporating seal and meeting safety requirements by Council	A road design meeting safety requirements by Council
Road costs	A full costing of the road	A full costing of this road	A full costing of the road including ongoing maintenance costs of the road in perpetuity
Environment Impact	A statement of environmental impacts	Statement of improved environmental impact over type 3	Clear evidence of an improvement in environmental impact
Social impact	A full statement of social impact	A statement of improved social impact	A statement of improved social impact over option 1 and 2
Financial impact	Financial considerations for Coop members	Financial considerations for Coop members	Financial considerations for Coop members
Community consultation	Nevertire community consultation	Nevertire community expectation	Nevertire community expectation
Legal advice		Substantial legal advice regarding prospects of winning the case in the LE Court not as strong as option 3	Substantial legal advice regarding prospects of winning the case in the LE Court