

Rural Land Sharing (SEPP15)

Section 96 Application - October 2016

Modification of Consent Condition 4 (a)

Access To Development

Re: Nevertire Road

Goolawah Cooperative

Lot 1 DP 1191860

200 Illa Langi Road Crescent Head NSW

Development Consent T6-02-109

Proposal

To modify condition 4 (a) from:

“Nevertire Road shall be designed and constructed to a Type 3 Local Road Standard having the characteristics listed in Development Design Specification D1 of Chapter B3 of Kempsey Development Control Plan 2013

to:

“Nevertire Road shall be designed and constructed to a composite all-weather (unsealed) two wheel drive access road on the low-lying flood-prone section, and 4m wide bitumen seal in front of existing neighbouring properties, in a staged improvement plan.”

Background

1. The modified development consent in May 2014 allowed for all-weather (unsealed) two wheel drive standard of Illa Langi Road, the western access from Maria River Road, and Type 3 Local Road standard for Nevertire Road providing access to Maria River Road to the north.

Type 3 requires 6m wide seal on an 8m wide road formation (1m shoulder each side) with a road design to allow 80 kph speeds.

2. The Cooperative's 'Section 96 Application to Modify Consent Condition' dated 01 April 2015 sought to change this by undertaking to maintain the existing all-weather (unsealed) two wheel drive access road at its current width and formation, with 40kph speed limit in the residential section and maintained in perpetuity by the owners to the standard required by emergency services.

3. Following Council Ordinary Meeting's rejection of that application in December 2015, discussions were held with Council staff to try and agree on a compromise road solution and course of action. The Cooperative then engaged engineering firm **DEX Consulting P/L** to advise on appropriate road construction plans.

4. The DEX report by Mike Dutton (01 July 2016) suggests that a strict application of Type 3 construction standard with 6m road seal is unreasonable and unsuitable for the situation. It recommended improvement and maintenance of the existing gravel road standard of Nevertire Road; with options for a sealed section in front of neighbouring properties and subsequent staged improvement of the road.

5. The report was provided to Council and its recommendations rejected by Council in an email dated 15 August 2016, instructing the Cooperative to prepare construction plans for a full Type 3 standard for the length of Nevertire Road.

6. This new October 2016 Section 96 Application is based on:

- DEX recommendations
- previous application arguments overlooked and incomplete or incorrect responses
- new traffic survey statistics
- a genuine attempt at finding a realistic compromise with Council requirements.

Rationale

Planning Controls

1. **Kempsey Development Control Plan (DCP)** Ch. B1, Sect. 8.3 ‘Development Requirements’ states that seal for access roads is required only if this creates an extension of existing sealed roads. Moreover it says: ‘Minor subdivision in isolated rural areas require all-weather 2 wheel drive access roads suitable for all year round access for essential services’.

Maria River Road with an estimated 200 vehicles per day (vpd) is unsealed and does not appear in Kempsey Shire Council (KSC) road work plans, presumably due to financial constraints. Half the shire’s rural roads are unsealed and will remain so for a long time.

2. **AUS Roads Rural Road Design** states unequivocally that one lane carriageway (3.7m wide) suffices for *annual average daily traffic* (aadt) of 50-150, and only recommends 4m seal for roads in *non-rural* environments in that range.

3. **Eppell Olsen & Partners** (road hierarchy experts) and **AUS Roads** class Nevertire Road as a rural access road to residential property (‘less than 250 vpd’), given its location 20+km from Crescent Head. It recommends speeds of 40-60 kph on unsealed surface, as it is NOT even a thoroughfare for local traffic.

4. **RTA** suggests speed limits of 40 kph and limiting carriageway widths to 3.5m for such roads with fewer than 100 houses.

5. **KSC’s Development Design Specification D1** (Geometric Road Design) is an inadequate table of road categories in that it fails to provide standards for roads with 50-150 vpd. All rural laneways with 20+vpd appear to require Type 3 construction: 8m-wide thoroughfares with 80 kph speed limits. The lower table thresholds are illogical as they overlap and do not allow for intermediate traffic volumes.

The DDS table contradicts NSW road planning instruments defining road design parameters.

6. **DEX** confirms that Type 3 Local Road in Kempsey DCP Table 1.8 is

‘...intended for standard rural subdivisions or rural-residential subdivisions with separate and discrete lots and individual dwellings where residents might drive to work and school buses, garbage trucks and other service vehicles operate and speeds are relatively high.

This is not typical of Goolawah Cooperative which is a ‘multiple occupancy’ under SEPP 15 legislation, speeds are low, residents work mainly from home or within the cooperative...’

An instructive example of SEPP 15 is Bundagen in Coffs Harbour Shire - 110 resident members living on 800 acres with one unsealed access road. By contrast Goolawah Cooperative with 55 residents on 1600 acres has two access roads of equal standing.

DEX notes: ‘in some other Council areas the standard of road construction for rural development is more closely related to the predicted traffic volumes from the development. For example, in Tweed Council area, where there are several similar developments, an existing gravel road of 6m width is acceptable up to a traffic flow of 75 vpd then a 4m seal to a flow of 150 vpd. This seems to be a fairer and more reasonable road requirement. As outlined in your earlier submission Lismore & Kyogle Councils also accept good unsealed pavement as an acceptable road standard.’

In nearby Nambucca Shire unsealed roads are the norm for rural access roads with traffic volumes up to 200 vpd (Nambucca Hierarchy Plan 2009)

7. The Cooperative has now had three separate road engineering firms independently assess the access road situation - Roadnet, Dennis Partners and DEX. All came to the same conclusion: that an all-weather gravel road standard is safe and functional; and that Council’s requirement for Nevertire to be upgraded to a Type 3 Local Road is unreasonable and impractical.

8. Rigid application of the DCP table is therefore inappropriate for the Cooperative/SEPP 15.

“Council does not have any local planning controls specific to rural land-sharing communities” (*).

Without planning instruments relevant to the Cooperative and with defective road design tables, Council’s demand for a ‘super highway’ for Nevertire Road is untenable.

Traffic

1. Council states: “The key determinative of the road type and standard required is the level of traffic ***generated*** by the development. Council has used this to determine the required road type and standard for the Goolawah rural land sharing community” (*).

That statement does not refer to ‘maximum’ or ‘potential’, but rather to actual traffic generated, so clearly by its own criteria Council should accept the Cooperative’s current traffic outcomes.

2. The Cooperative’s recent traffic surveys of its residents have recorded 20-21 vpd for Nevertire Road and 23-25 vpd for Illa Langi, as they obviously travel to Crescent Head/Kempsey and Port Macquarie using both access roads.
3. Currently there are 27 households established at the Co-operative (with 33 vehicles), which means traffic generation of *0.89 vpd* per dwelling ***on each road***. Total combined is therefore 1.78 vpd per dwelling. The community has a high proportion of home workers and retired folk who do not ‘commute’.
4. Although the Co-op has 78 dwelling sites ‘multiple occupancy’ developments typically reach much less than full capacity. Presently 68 shareholders hold 78 shares. Even assuming 50% more dwellings added to the current 27 to reach 40 and applying 0.89 vpd, the resulting traffic count for Nevertire is only 36 vpd, well short of a proper sealed road threshold.

Amenity & Safety

1. The Cooperative has three resident neighbours on Nevertire Road, with two houses (both built since the Cooperative was established) setback over 100m from the road with vegetation barriers, and one house setback 60m. These houses do not ‘front’ Nevertire Road.
2. Nevertheless the Cooperative has offered to help neighbours with dust mitigation due to passing traffic through further barrier planting on their boundaries and use of its fire truck to settle dust during very dry periods.
3. Upgrade to Type 3 standard on Nevertire Road would allow 80kph speed limit on an unpoliced local access road, which would increase the risk of accidents with people, domestic animals and native fauna, and create more traffic noise.
4. As mentioned above, RTA guidelines suggest narrower carriageways and 40 kph speed limits to calm traffic in such low-density housing settings rather than increase traffic flows.
5. Overall resident amenity would in fact be reduced in this quiet location by increased traffic noise, and risk to pedestrians and animals.

6. Neighbourhood amenity on Nevertire Road has also been improved by the Cooperative's high standard of road maintenance, which resident neighbours have benefited from at no cost.

7. The Cooperative has recently erected *SLOW-REDUCE DUST* signs on both access roads and amended its By-Law accordingly:

“Members and their visitors are not to drive faster than 20kph in residential areas and 40kph in non-residential areas in Goolawah and on both access roads of Nevertire and Illa Langi”.

8. Furthermore as a major concession to ‘good neighbour policy’ the Cooperative will help to reduce any dust impacts on neighbours by agreeing to provide a section of bitumen on Nevertire Road in front of those properties, once the volume of traffic reaches a justifiable threshold.

Engineering & Construction

1. As outlined by DEX, compliance with the Type 3 engineering standard demanded by Council for Nevertire Road would have serious technical difficulties, as follows:

- a. the Council flood drain on the sharp corner does not allow 8m wide pavement
- b. an 80 kph speed curve would mean acquiring 8000 sqm of private land (presently not for sale) and relocation of fences, yards and electrical & telecommunication equipment.
- c. bitumen on flood-prone sections is likely to be undermined, damaged and to lift during flooding - ‘a good gravel road can withstand low level flooding and be easily repaired’

The advice above contradicts Council's assertion that “Floodwaters can damage roads, both sealed and unsealed” (*). Of course they can, but the risk of damage is higher on low traffic bitumen sealed road.

2. Low traffic volume (currently 24 vpd) on the higher (above flood zone) section of Nevertire Road would also jeopardise the life of a sealed road surface, which requires 100 vpd to stay durable and intact, according to expert road engineering advice (Craig Nethery, ex Roadnet).

3. Council's own 2014 Asset Management Plan sets a minimum of 300 movements per day before seal will achieve an effective lifecycle cost.

4. Council states: “The design of the road will need to take infrastructure into consideration and it has not been demonstrated that this is prohibitive to constructing a Type 3 Local Road”. (*)

This statement is refuted by DEX’s expert advice that Type 3 will indeed entail acquisition of a large swathe of private land, relocation of fences, yards and electrical & telecommunications installations.

The Cooperative has closely examined this substantial list of affected infrastructure, and concluded that a Type 3 Local Road is prohibitive and indeed impractical in that location.

Environmental

1. **Environmental Planning & Assessment Act 1979**, Section 96 (1A) states that modification to rural roads can only be allowed if “the proposed modification is of minimal environmental impact’.

2. Council has failed to address the negative environmental impacts of transforming Nevertire Road into a ‘Type 3’ design, as follows:

- a. Council claimed ‘no significant vegetation removal is likely’ but the watercourse/drainage channel has rows of casuarinas, habitat for threatened species.
- b. Council was silent on the issue of increased risk to fauna from the higher designated traffic speed limit.
- c. Council also ignored the consequences of the necessary disruption of those water courses for road construction.

3. Council staff stated that the previous Cooperative proposal to maintain ***existing*** gravel road “is not considered to be of minimal environmental impact” (*), but that carriageway is already in place. Whereas the severe consequences of Type 3 standard with an expanded sealed road taking out trees and affecting water courses are somehow ignored

Economic

1. The Cooperative is a *low cost, rural land sharing cooperative* under SEPP 15 and cannot afford onerous road construction budgets. The Cooperative 2016 Financial Report shows that we

do not have financial reserves for construction of a Type 3 road, and shareholders do not have the means to fund upwards of \$870,000 - the DEX budget estimate for construction and engineering, excluding land acquisition and infrastructure changes.

2. SEPP 15 developments differ substantially from traditional ‘subdivisions’ or ‘community title’ where residents own the land their houses are built on and can get bank loans. Moreover they have an expectation of significant asset appreciation, so there is a strong profit motive, which is NOT the case in developments like Goolawah Cooperative.

3. The financial strain on Cooperative members of funding a Type 3 road could jeopardise the viability of the development and create ‘housing stress’ for vulnerable groups within the membership, with risks of homelessness and reduced housing affordability.

4. The Cooperative already shoulders responsibility for maintaining both access roads (combined total 4 kms) at no cost to Council or resident neighbours.

Combined with the internal Cooperative road network (approx 12 kms), the Cooperative has expended over \$650,000 in road construction and maintenance since its foundation in 2000.

In December 2013 during a site inspection to the Cooperative, Shane Reinhold of KSC commented: “Goolawah has some of the best roads in the shire”.

5. Given its high cost and disincentives outlined already, Type 3 road construction would not come out positive even in the most rudimentary cost-benefit analysis.

Conclusion & Proposal

The current Consent Condition road design specification for Nevertire Road is unrealistic and onerous. ‘Type 3’ standard is inappropriate, due to its excessive proposed width and speed, high impact on-infrastructure, unsuitability in the flood-prone section, unjustified by low traffic volumes and poor cost-benefit ratio.

However in a spirit of cooperation and ‘good neighbour’ policy, the Cooperative is prepared to accept a compromise solution based on adopting DEX’s recommendations, using new traffic statistics and a staged development plan with 400m sealed section.

Following the same principle as Council's stated plan to upgrade and seal Maria River Road ('as their finances, resources and competing priorities allow'), the Cooperative proposes the following two staged development of upgrades to Nevertire Road:

- 1. Improvements to the existing gravel road, with adjustment of Maria River Road intersection, removal of its gate and cattle grid, improvements to signage & drainage, plus adjustment to the sharp corner if feasible. Completion November 2017.**
- 2. Construction of 4m wide bitumen for 400m fronting the existing neighbour dwellings, when the necessary traffic threshold is reached and which is adequate to maintain sealed surface in position to avoid its rapid deterioration.**

Council's traffic counting equipment could be installed on Nevertire Road to establish an irrefutable statistical basis for that threshold traffic figure.

The Cooperative agrees to annual reviews with Council to monitor the growth of the Cooperative community and its traffic flows, and further develop Nevertire Road if and when vpd statistics show sufficient increases.

(*) Staff Reports in 'Kempsey Shire Council - Agenda for Ordinary Meeting 15 December 2015'