

DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

14 June 2005

DSDS3	FOUR STOREY COMMERCIAL AND RESIDENTIAL BUILDING – 10 PRINCE OF WALES AVENUE, SOUTH WEST ROCKS FILE: T6-04-694 TJN
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SUMMARY:

Reporting that Council has received an application to demolish an existing building, and erect a four storey commercial and residential building which requires the support of a SEPP 1 objection and for which objections have been received.

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Applicant: Ross Nicastri
Subject Property: Lot 18 DP 3588
 10 Prince of Wales Avenue, South West Rocks
Zone: 3(v) "Business (village) V"

Description of Proposal

The proposal involves the demolition of an existing one storey structure to be replaced by a four storey building containing floor level commercial, with basement carparking and storage areas. The 2nd and 3rd storeys contain four separate residential units. ([Appendix F](#))

Heads of Consideration

The proposal has been assessed having regard for the Heads of Consideration as identified under Section 79C(1) of the Environmental Planning and Assessment Act 1979 with the following matters deemed to be of particular relevance: -

The proposal is not considered to be contrary to the North Coast Regional Environmental Plan 1988 (NCREP 1988).

Kempsey Local Environmental Plan 1987 (KLEP 1987)

The subject land is zoned 3(v) (Business (Village) "V" Zone) under the provisions of this plan. The objectives of this zone are: -

- (a) to permit the provision of a suitable range of tourist accommodation, personal services and retailing to meet the

needs of tourists and local residents within the existing village centre at South West Rocks; and

- (b) to prevent development which would inhibit the establishment of a new town centre.

The proposal contains a ground floor commercial space with four residential units above this. This provides accommodation and retail services in accordance with the zone objectives. It is considered to be consolidating the town centre.

Clause 25 of KLEP 1987 sets a height limit of 3 storeys for the zone. Pursuant to State Environmental Planning Policy 6 – Number of Storeys in a Building, the proposal has 4 storeys as it incorporates a below ground storage basement. As a result the application requires the support of a SEPP 1 objection which the applicant has submitted.

State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65)

The proposal is a residential flat building as defined within the provisions of SEPP 65. Under the provisions of SEPP 65 the following is required from a qualified designer:-

- (a) a statement that he or she designed or directed the design of the residential flat development, and
- (b) a statement that the design quality principles set out in part 2 of the SEPP are achieved for the residential flat development.

The building has been designed by a registered architect. A statement of the design principles has been included and is attached. [\(Appendix G\)](#)

It is considered that the provisions of this SEPP, as they apply to the Kempsey Shire Council, have been met.

State Environmental Planning Policy 71 – Coastal Protection

The subject lot falls within the coastal zone as defined by SEPP 71, however the site is not classified as a sensitive coastal location. Therefore concurrence from the Minister is not required. The proposal is not State Significant Development under the provisions of this State Environmental Planning Policy. In addition to this the application was completed prior to State Environmental Planning Policy (State Significant Development) being gazetted, meaning that the provisions of this policy do not apply. Council is required to have regard for the matters for consideration as outlined in Clause 8 of SEPP 71.

- (a) The proposal is not considered contrary to the aims and objectives as set out in clause 2 of the SEPP.

- (b) The proposal is located a substantial distance from any coastal foreshore and will not interfere with any public access to the foreshore.
- (c) As the site is not located adjacent to any foreshore there is no requirement to enhance any existing public access.
- (d) The proposal is for a structure that presents itself as a three storey building in a commercial area with a three storey height limit. It is considered that the building is consistent with the current and planned streetscape.
- (e) The site is not located adjacent to any coastal foreshore and therefore will not overshadow any public foreshore reserve.
- (f) The surrounding area is predominately urban/commercial, as such, it will not detract from the scenic qualities of the New South Wales coast line.
- (g) The site is cleared meaning that there will be minimal impact upon threatened species of flora and fauna.
- (h) There will be no significant impacts on marine ecosystems.
- (i) The lot is situated within a nearby developed commercial precinct meaning there will be no impacts on wildlife corridors.
- (j) There is no perceived impacts upon coastal processes.
- (k) The site has no foreshore frontage so conflict between land and water based activities will be negligible.
- (l) The site contains an existing coastal cottage. This style of development is adequately represented elsewhere in South West Rocks.
- (m) The applicant is required to treat stormwater on site to an acceptable level to minimize impacts on coastal water bodies.
- (n) See (l)
- (o) Not applicable as no rezoning is proposed.
- (p) The proposal complies with Council's energy smart homes criteria and is not expected to significantly contribute to any negative cumulative environmental impacts.

Part 4 – Development Control also applies to the proposal.

Clause 13: Flexible Zone provisions - not applicable.

Clause 14: Public Access – the proposal will not block, impede or limit land based access to any coastal foreshore.

- Clause 15: Effluent Disposal – Not applicable as reticulated sewer is available.
- Clause 16: Stormwater – Once the final design of the building has been accepted by Council, the applicant will be required to show how it is proposed to treat stormwater on-site prior to disposal.

Development Control Plan 34 – South West Rocks Town Centre

The proposal falls within the area defined by DCP 34 as the South West Rocks Town Centre and as such is required to have regard for the provisions of this DCP. Section 3.2.4 "Built Form within the Village Commercial Precinct" is of particular relevance to the proposal. The objectives of this section are: -

"To achieve buildings with appropriate setbacks, heights, size and scale which ultimately contribute to the town centre as a "Seaside Village" with a compact style and strong pedestrian focus".

Compliance with the objectives is defined through assessment of the proposal against the performance criteria outlined in part (b):-

- i) It is considered that the proposal will contribute to the overall aesthetics of the streetscape through addressing the requirements of the development control aspects of the South West Rocks Town Centre Masterplan.

There is no scope to improve interlot access given the size of the site and the fact that adjoining lots have been developed to their full potential.

Through bringing the street frontage into alignment with existing surrounding buildings and providing retail facilities the proposal is encouraging an active street frontage.

- ii) The development is required to address the relationship with adjoining buildings. Visually it is considered incompatible with the current adjacent structures, however it is consistent with the planned future streetscape more so than most other development within the precinct.
- iii) It is considered impractical to require the applicant to provide rear access to the lot. An access from Prince of Wales Avenue is considered the only means of providing vehicular egress.
- iv) Not applicable as it does not front Paragon Avenue.
- v) The building has a height of 11 metres containing four stories, contravening the 9m three storey limit set out in the DCP. This is addressed in the DCP 22 assessment.
- vi) The development has a floor space ratio of less than 1.5:1.

- vii) The building presents as a three storey building. The DCP states that approval of the third storey is subject to stepping back. This is achieved throughout all levels of the development, giving the proposal a less imposing frontage.
- viii) Not applicable as no setback to the street frontage is proposed.
- ix) No seating is proposed on Council's footpath at this stage. This would be subject to separate assessment depending on what type of retail activity is proposed.

DCP 34 also outlines the need to retain and encourage the commercial use of some of the traditional cottages within the CBD. However it is considered that in this instance, the cottage does not reflect the current streetscape (streets such as Memorial Avenue have a mixed streetscape and as such these style of cottages are maintained). The building is not listed with the draft heritage study. As there is no statutory heritage listing it is considered appropriate to allow removal of the existing cottage in this instance.

The proposal is required to contribute to the "Seaside Village" character of the town. A streetscape analysis has been submitted showing the proposal in context with adjoining development. [\(Appendix H\)](#)

The applicant has submitted a comprehensive submission having regard for all aspects of DCP 34 [\(Appendix I\)](#). It is considered that the design aspects of the DCP have been met through the use of hardwood timber frontage and stone materials.

Development Control Plan 22 – Local Housing Strategy

As the land is zoned 3(v), the proposal is subject to the provisions of DCP 2, except in respect to density, setbacks and landscaping. It is required to comply with the following: -

STANDARD	REQUIRED	PROPOSED	COMPLIES Y/N
Density	- 3(v) zoning – density provisions do not apply - a floor space ratio is 1.5:1 is required.	Floor space ration 1.3:1	Yes
Setbacks - side - front - rear	No provisions due to 3(v) zone		N/A
Carparking	4 resident/1 visitor/2 retail		Section 94 contributions are to be levied.
Private open	15m ² per unit	>15m ² per unit	Yes

space	80% wider than 2 metres	80% wider than 2 metres	
Landscaping	No provisions due to 3(v) zone		N/A
Height	3 storeys 9 metres	4 storeys 11 metres	No
Solar access	Section 4.7 3.5 star rating	Adjoining private open space overshadowed for more than 2 hours. 3.5 star ratings achieved.	No
Privacy	Section 4.8	Adverse privacy impacts on adjoining residence	No
Cut and fill	1.5 metre max cut/fill	2.1 metre cut to contain subsurface storage areas	No
Erosion/ sediment control	Section 4.10	To be conditioned	Yes
Infrastructure	Section 4.11	There is no stormwater drainage system readily available in Prince of Wales	

Height

The proposal is to construct four storeys, with a maximum height of 11 metres. The applicant has submitted a SEPP 1 objection to vary the three storey limit, and a request to vary the 9 metre height limit as identified within DCP 34 – South West Rocks Town Centre. This can be summarized as follows: -

"We seek Councils support in varying the 3 storey development standard as the proposed storage room is located within the property boundaries and has no adverse effects on any of the adjoining properties. The intent is to provide the commercial area with some additional storage space".

No objection is raised to the use of SEPP 1 in this instance to vary the standards for the following reasons: -

- (a) The storey will not add to the bulk of the building when viewed from the street or from Jubilee apartments as the fourth "storey" as defined by SEPP 6 relates to a below ground storeroom.
- (b) The building would appear as a three (3) storey building from outside the site.

Clause 3.24 b) v) of DCP 34 states that buildings are to have a maximum of three storeys with a height limit of nine metres ground to top most floor ceiling.

The applicant has submitted the following in seeking a variation to the DCP:-

" The proposed building has a height limit of 9 meters measured from the natural ground level at Prince of Wales Avenue to the underside of the top most ceiling.

The natural ground level was identified from the survey drawings and was used as a datum point. The buildings floors are carried through this level to provide an economical construction and to meet the sites potential.

Although the site falls away to the east the intent is to provide a three storey building addressing Prince of Wales Avenue and to form part of a uniform street pattern with existing and future developments.

There are also precedents of this found within the precinct.

The Bronte and Jubilee Apartments have both been constructed on sloping sites where the building height has been taken from the highest natural ground level.

Bronte Apartments has two levels of residential, one level of commercial and a lower ground car park. From Paragon Avenue this reads as a four storey building. The proposed site is an infill development and the side elevations will not read in the same context as a street elevation.

It should also be noted that the adjoining NAB site has a horizontal parapet impacting on the proposed site despite the natural fall of the land.

We seek Council's support in our interpretation of the building height as defined within DCP 34 and found within the existing precinct."

While Council can assume concurrence in relation to the number of storeys within the building and the height limit, it is recommended that Council only resolve to support these variations if it can be shown that there will be minimal impact on the private open space of adjoining residences. It is considered that at present the solar impacts upon the residents of Bronte Court is too great to justify a departure of this magnitude (2 metres). (See "Solar Access" and "Privacy").

There is also considered to be adequate scope to reduce the height of the building. The building can be designed to follow the topography at the site or the ceiling levels can be lowered from the proposed 3 metres down to 2.4 metres and still remain compliant with the

Building Code of Australia. This should be fully explored prior to Council considering approval.

Cut/Fill

The applicant proposes a cut of 2.1 metres to accommodate the subsurface storage area. No objection is raised as it is contained entirely within the building.

Solar Access

In accordance with the requirements of section 4.7.2, three storey development is to be designed to ensure that no part of any adjoining private open space are to be overshadowed for more than two (2) hours between 9.00am and 3.00pm on June 22nd. From the attached shadow angle diagrams [\(Appendix J\)](#), it is clearly seen that this requirement is not met when examining the solar access to the primary living areas of Bronte Court.

The applicant has submitted a comprehensive sun shadow analysis with the application. [\(Appendix K\)](#) The basis of this submission relates to the development to the south known as Bronte Court and the outdoor living areas of the units situated at the east and western ends of the building. As seen from the attached photographs, the balconies of these units that serve as the private open space are partially located at the side of the buildings. The northern aspects will be totally overshadowed by the proposed building. There are areas of the balconies facing east and west respectively which form part of the private open space will not be overshadowed for the entire day. However they will still be overshadowed for more than 2 hours. [\(Appendix L\)](#)

Privacy

Given the nil setbacks allowed for in the zone, and the positioning of the existing private open space of the units in Bronte Court, it is considered that there will be privacy conflicts regardless of how the lot is developed. While there is scope to improve privacy to Bronte Court, given that the area is zoned commercial, it is considered unreasonable to totally redesign the project to ensure that there is no overlooking onto the units to the east known as Jubilee Apartments.

Privacy screens can be erected at the north and south of the rear balconies to minimize conflicts with the directly adjoining developments in Prince of Wales Avenue.

Pedestrian Access

Access to the retail floor area will rely on pedestrians sharing the driveway to the carpark and entering from the side. The driveway will be about 400 mm below the retail floor level, so necessitating a step or ramp up to floor level. However this detail is not shown in the plans. Two other doorways are shown to access from the

driveway, this will need to be redesigned. The BCA requires separation between vehicular and pedestrian access.

Vehicular Access

Access from the carpark is onto Prince of Wales Avenue and is a potential pedestrian hazard, particularly given the proposed narrow driveway. It will be necessary to provide design modifications to demonstrate a safe arrangement for vehicles leaving the site.

Advertising

The application was advertised in accordance with Council's notification policy with six (6) objections being received, one of which was labelled as confidential. These can be summarised as follows:-

[\(Appendix M, Part1, Part2\)](#)

Objection	Planning Comment
1 The building exceeds the height limitations as defined by DCP 34	1 Agreed (See Height).
2 Loss of amenity and privacy as a brick wall will enclose the balcony	2 Some loss of amenity resulting from the development of this site is inevitable, however it is considered that there is scope to explore alternative designs to try and minimize this impact.
3 All of the existing views towards the north will be obliterated.	3 Recent Land and Environment Court decisions state that it is unrealistic to expect to retain side views when a development complies with all the relevant planning standards. (Appendix N) While the building does not comply with the height restrictions in this instance, development which complied with the height requirements would also remove the view.
4 Privacy will be lost as there will be windows facing directly onto my balcony.	4 Any windows directly facing private open space areas are to be made of opaque glass or the like.
5 Overshadowing will greatly	5 The proposal does not comply

impact on my property.

6 Access to the proposed car park will require another driveway across Prince of Wales Avenue. This is to the detriment of all pedestrians in the area.

7 The proposed building extends the entire length of the block at the maximum building height. This will set a precedent.

8 Proposed building should only extend to the alignment of the residential first floor of number 8 Prince of Wales Avenue, thus giving all buildings access to natural light, views and sunshine at the rear of the buildings

9 Failure to come up with design alternatives would create a concrete ghetto and block out sunlight for all existing and future surrounding buildings if this alignment is allowed.

This matter can easily be rectified.

with the solar impact requirements of DCP 22. (See Solar Access).

6 While this is acknowledged, the property owner has a right to access his property from the street frontage which is the only access to the land.

It is considered more desirable to have a driveway enabling access to off street parking, than having no driveway crossing and no on site parking which would put further pressure on public car spaces in the precinct.

7 The building exceeds the maximum height as set by DCP 34, Council needs to carefully consider the impacts of this prior to approving the variation.

8 The building aligns with the frontage to Prince of Wales Avenue.

Any other alignments are assessed using performance based criteria such as solar and privacy impacts.

9 Council is presented with a number of design alternatives to examine as part of this report. During the assessment process a number of design options have been looked at to try and maximize the sites development potential while trying to minimize impacts on adjoining properties.

It is contended that there are no reasonable and easy design solutions in this regard.

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| 10 | Proposal will adversely affect the whole character of the surrounding area. | 10 | The proposal complies with the design criteria of SEPP 65 and contributes to "Seaside Village" theme through wooden frontages, expansive decks and increased second and third storey setbacks. A number of older buildings in the precinct do not meet this criteria. |
| 11 | Jubilee Apartments would suffer a severe loss of privacy with the upper balcony of the proposed development looking directly into our living area and balcony from six metres away. | 11 | Design modifications will be necessary to minimise these impacts. (See "Conclusion"). |
| 12 | Levels 1 and 2 appear to be car park areas. What provisions for fire protection is made if these openings are on the rear boundary. | 12 | There is only one level of car parking proposed. Any car park is required to comply with the provisions of the Building Code of Australia. This will include completely enclosing the rear of the building and most probably providing mechanical ventilation. |
| 13 | What provision is made for stormwater disposal and sewerage connection? | 13 | The system was designed to collect stormwater from existing development on the eastern side of Prince of Wales Avenue.

The applicant should be required to show that stormwater can be disposed of without increasing pre-development flows. |
| 14 | Is the existing easement capable of additional capacity. | 14 | See 13 above. |
| 15 | There may be additional water runoff onto neighbouring properties. | 15 | See 13 above. |

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| <p>16 During construction of the proposed development the income derived from the adjoining units as holiday accommodation will be affected due to construction noise.</p> <p>17 Such a building height and structure will adversely affect the character and amenity of South West Rocks should another developer chose to use this development as a precedent.</p> | <p>16 Any construction noise is governed by the industrial noise policy.</p> <p>If approved, the hours of construction will be conditioned to be from 7:30am till 4:30pm Mondays to Fridays, and 8:30am till 12:30pm on Saturdays, which is considered reasonable to allow development to proceed.</p> <p>17 All proposals are assessed in accordance with Section 79(c) of the Environmental Planning and Assessment Act 1979.</p> <p>Council needs to be certain that there will be no significant adverse impacts from approving a departure from the height standards.</p> |
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Conclusion

The nature of the surrounding development makes this site exceptionally difficult to achieve its full development potential. The existing brick wall to the north of the site severely limits solar access. The north facing balconies of Bronte Court further limits development on the land. In order to design a building on site it is necessary to achieve a trade off between privacy and solar access, particularly having regard for the residences of Bronte Court. By designing a proposal that maximises sunlight to these units, the loss of privacy would increase. In order to alleviate this, privacy screens should be erected, meaning that the issue of adequate solar access will again be relevant.

The applicant has submitted a mirrored set of plans ([Appendix O](#)), showing how these conflicts potentially arise regardless of design.

The blocks to the north and south have been developed in a manner that has afforded little consideration for the development of the subject lot. The current design put forward by the applicant and his architect achieves the objectives as set out in DCP 34, SEPP 65 and SEPP 71, as well as modern planning principles, including placing private open space at the front and rear of the development to maximize the development potential of adjoining lots. It is acknowledged that the lot is "difficult to work with" and some concessions should be made in this regard. It is recommended that Council only resolve to support the variation to the overall height and number of storeys in principle, subject to the applicant making design

concessions to minimize the solar and privacy impacts on the Bronte Court units.

Design alternatives to minimise these impacts include: -

- reduce height to comply with DCP 34 through stepping of building or reduction in ceiling height
- reduction of living areas to increase side setbacks
- deletion/reduction of storage areas
- removal of 2nd stairwell
- increased front/rear setbacks for the 2nd and 3rd floor
- privacy screens to side boundaries

REPORT IMPLICATIONS:

- ***Environmental***

The applicant will be required to show how it is proposed to treat stormwater to an acceptable level. This will need to be done prior to release of the Construction Certificate.

There is no Council stormwater system adjacent to the site. Once a final design has been settled upon it will be necessary to address stormwater issues.

- ***Social***

As stated within the report there will need to be careful consideration given to the social impact this development will cause to adjacent units through overshadowing and privacy issues. There is considered scope and lessen the impacts.

- ***Economic (Financial)***

The period is expected to bring an economic development for the period of construction. In addition to this retail space is being supplied which will consolidate the centre of South West Rocks.

RECOMMENDATION

A That the applicant be advised that Council is prepared to consider supporting the variations to the numbers of storey as defined by Clause 25 of KLEP 1987, and the height limit as defined by DCP 34 subject to the receipt of amended plans providing for reduced impacts of overshadowing of the adjoining units whilst optimising privacy.

B That the applicant be further advised that:

- (a) it will be necessary to submit details on how it is proposed to limit stormwater flows to predevelopment levels;
- (b) pedestrian access to the residential units from Prince of Wales Avenue will be required to be separated from vehicular access to comply with the BCA;
- (c) access to the retail floor area as proposed, is impractical and will require modification; and
- (d) it will be necessary to modify vehicular access to demonstrate potential conflicts between pedestrians and cars leaving the site will be managed in a safe manner.

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R B Pitt
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES