

DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

15th November 2005

DSDS8	THREE LOT SUBDIVISION AND BOUNDARY ADJUSTMENT, DEMOLITION OF A DWELLING AND ERECTION OF TWO ADDITIONAL DWELLINGS DULCONGHI AND STEWART STREETS, CRESCENT HEAD FILE: T6-05-273 GGL
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SUMMARY:

Reporting that Council has received a Development Application for a three (3) Lot Subdivision and Boundary Adjustment and erection of a two (2) additional residential dwellings that requires a variation to Council's minimum lot size and variations to DCP 22 for which three objections and one confidential objection has been received.

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Applicant:	Witzig Schulz Architects
Subject Property:	Lot 2 DP 570181, 13 Dulconghi Street and Lot 180 DP 755541, 36 Stewart Street, Crescent Head
Zone:	2(a) (Residential "A" Zone)

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

Kempsey Local Environmental Plan 1987

The proposed development is defined as a "Residential Subdivision and Residential Development" under the KLEP and is permissible with Council's consent in the 2(A) (Residential "A" Zone). The objective of the zone is:

To provide areas for low density residential development.

It is considered that the proposal is consistent with the zone objective.

Pursuant to Clause 16 (1) d of the KLEP 1987:

"Council shall not consent to the subdivision of land unless each allotment proposed to be created by the subdivision has an area of at least –

- (d) in the case of land within Zone No. 2(a), 2 (b1) or 2 (v) –0.05 hectares

Proposed Lot 1 is 402m². The applicant has submitted a SEPP 1 – Development Standard objection, requesting Council consider varying Clause 16 (1)(d) to permit the smaller lot. (See SEPP 1 Objection)

Clause 24 of KLEP 1987 provides:

- (1) The Council shall not consent to the erection, on and within Zone No 2(a), 2(b1), 2(c) or 2(v) of a building:
 - (a) which contains more than 2 storeys; or
 - (b) in the case of a building of 2 storeys, having a topmost floor with a ceiling level more than 6.2 metres above the level of the natural surface.
- (2) Subclause (1) does not operate so as to prohibit the Council from consenting to the erection of a 2 storey building on land where, because of the local topography, it is impracticable to erect a 2 storey building on the land in compliance with that subclause.

It is considered that the proposal does not satisfy the requirements of Clause 24. (See comments below under "Height").

State Environmental Planning Policy 71 – Coastal Protection

The proposed development is identified as being within the Coastal Zone. Pursuant to SEPP 71 Council is required to consider Clause 8 matters. The relevant matters are outlined below:

- (a) the aims of the Policy set out in Clause 2. The proposal is generally consistent with the aims of the policy, with the possible exception of (k) which requires development to ensure that the type, bulk, scale and size of development is

appropriate for the location and protects and improves the natural scenic quality of the surrounding area.

See comments below.

- (b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved.

No impact on public access to coastal foreshore.

- (c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability.

No opportunities to provide access as part of this application.

- (d) the suitability of development given its type, location and design and its relationship with the surrounding area. The development is suitable in terms of type and location.

Design issues, in particular, height are addressed below.

- (e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore. No overshadowing of coastal foreshore.

Some views will be lost from Dulconghi Street but are not considered significant.

- (f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,

Subject to appropriate design, the proposal is acceptable.

- (g) measures to conserve animals (within the meaning of Threatened Species Conservation Act 1995) and plants (within the meaning of the Act), and their habitats,

No significant native vegetation exists onsite.

- (h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats,

No significant impacts. Stormwater from the site requires appropriate treatment.

- (i) existing wildlife corridors and the impact of development on these corridors,

No significant impact.

- (j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,

No significant impact.

- (k) measures to reduce the potential for conflict between land-based and water-based coastal activities,

No conflict anticipated.

- (l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,

No known cultural places will be impacted.

- (m) likely impacts of development on the water quality of coastal waterbodies,

Provision needs to be made for treating stormwater. See below.

- (n) the conservation and preservation of items of heritage, archaeological or historic significance,

No known items of significance.

- (o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,

Not relevant to application.

- (p) only in cases in which development application in relation to proposed development is determined:

- (i) the cumulative impacts of the proposed development on the environment and

- (ii) measures to ensure that water and energy usage by the proposed development is efficient.

The proposal will be required to comply with the NatHers rating of 3.5 stars or better.

Clause 16 of State Environmental Planning Policy 71 – Coastal Protection requires that the consent authority must consider stormwater disposal from the site and must not grant consent to a development application if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.

The development will require consideration of water harvesting and reuse on-site, together with opportunities for onsite infiltration.

State Environmental Planning Policy 1 – Development Standards Objection [\(Appendix O\)](#)

The applicant seeks council's agreement to the use of SEPP 1 to vary the minimum lot size of 500m² to allow the subdivision of proposed Lot 1 to a size of 400m² on the following basis:

'The building setbacks and roof heights are generally in accord with DCP 22'.

Council may assume concurrence from The Department of Planning for SEPP 1 Objections in urban areas.

Council has previously been prepared to use SEPP 1, subject to the proposed development complying with the relevant development standards contained in DCP 22.

Given that the proposal is not consistent with the development standards of Council's Development Control Plan (DCP22) - Local Housing Strategy, it is considered that the SEPP1 objection should not be supported in this instance until such time as the applicant is able to demonstrate full compliance in respect to the development standards outlined in DCP22 - Local Housing Strategy.

Development Control Plan (DCP) No. 22 – Local Housing Strategy (Urban Areas – 2003) [\(Appendix P\)](#)

The proposal has been assessed in accordance with the provisions of DCP 22: -

Development on Proposed Lot 1

STANDARD	REQUIRED	PROPOSED	COMPLIES YES/NO
Lot Size Proposed Lot 1	500m ²	402m ²	*No
Density Proposed Lot 1	400m ²	402m ²	Yes
Front Setbacks	Primary Street 5m Minimum with 1.5 encroachment	5m setback with 200mm Lot 1 encroachment	Yes
Side Setback	Eastern Elevation 900 minimum with 1.8m average	900mm minimum with > 1.8m average	Yes
Rear	Western Elevation 900 minimum with 1.8m average	900mm minimum with > 1.8m average	Yes
Car Parking & Access	1 covered car space Comply with AS 2890.1	Double garage	Yes
Private Open Space	Minimum area of 25m ² with a 4mx4m area <1 in 8 gradient.	< 1 in 8 gradient not achieved Balcony with > 15m ² with 2m width over 80% of their areas.	*No
	Accessible from living areas and adequate solar access	Balcony and living area are north facing which achieves adequate solar access	Yes
Landscaping	130m ²	174m ²	Yes

Height	6.2m to Top Plate with overall height of 7.9 metres	5.8m to Top Plate with overall height, maximum of 8.2 metres.	*Yes
Solar Access	Min 3.5 NATHERS Adequate solar orientation No shading of neighbouring residential buildings	NATHERS has not been received Design has maximised solar access available Proposal is not considered likely to result in any adverse overshadowing.	*No Yes Yes
Privacy	Section 4.8 of DCP 22	Some concern with proposed dwelling on Lot 2.	Yes
Cut and Fill	Max 1.5m	Approximately 2m	*No
Erosion and Sediment Control	No sediment runoff	To be conditioned.	

* = see Planning Comment

Lot Size (Lot 1)

The applicant has submitted a State Environmental Planning Policy No 1 (SEPP 1) Objection to Clause 16 (1) d of KLEP 1987 (See SEPP 1 above). The proposed Lot 1 has a total site area of 400m². KLEP 87 requires that Council shall not consent to the subdivision of land zoned 2 (a) having a minimum lot size less than 500m². Whilst the minimum lot size is not achieved under KLEP 87, the proposed single story dwelling complies with the Development Standards in DCP 22 with regards to setbacks and landscaping. The proposed dwelling is not expected to impact on adjoining properties from overshadowing or overlooking as a result of reduced lot size and is considered reasonable in this instance.

Private Open Space (Lot 1)

Section 4.4 of DCP 22 provides that an area of private open space is to be set aside for each dwelling. The minimum area for each ground floor dwelling is 25m² and should be capable of containing a rectangle of 4m by 4m not steeper than 1 in 8 in gradient. Private Open Space

areas are to be orientated to achieve maximum year round solar access and be designed to enable an extension of the dwelling's living area. Both proposed dwellings provide decking as private open space. The DCP allows private open space to be provided as decks and balconies, but this is in respect to dwellings in residential flat buildings located wholly above ground level. The orientation and size of the deck is capable of achieving the requirements of Section 4.4 of DCP 22 and may be considered reasonable in the circumstances being approximately 45m² in area and containing a 3.5 m x 3.5 m rectangle.

Cut and Fill (Lot 1)

To accommodate the garage of the proposed dwelling on lot 1, approximately 2m of cut will be required, which exceeds the maximum allowable of 1.5 metres under DCP 22. Council has in the past allowed a variation to this development standard in cases where additional cut is to be retained by the building. The cut will reduce the gradient access to the garage from Stewart Street. It must also be noted that the topography of the site is not that steep at the point of the cut and will not result in any slope destabilisation, which is the primary intention of the standard. However, it is recommended that a condition should be imposed requiring engineering details to the means of stabilizing the earth during excavation.

Development on Proposed Lot 2

STANDARD	REQUIRED	PROPOSED	COMPLIES YES/NO
Lot Size Proposed Lot 2	500m ²	555m ²	Yes
Density Proposed Lot 2	500m ²	555m ²	Yes
Front Setbacks	Primary Street 5m Minimum with 1.5 encroachment	5m setback with 200mm 1.2m encroachment	Yes
Side Setback	Eastern Elevation 900 minimum with 1.8m average	900mm minimum with > 1.8m average	Yes
	Western Elevation 900 minimum with 1.8m average	900mm minimum with > 1.8m average	Yes
2 storey dwelling	1.5m Minimum with	1.5m Minimum	Yes

on lot 2	4.1m average	setback is provided with an average minimum setback of 4.1m on both elevations	
Rear	1.8m average minimum setback	> 1.8m setbacks	Yes
Car Parking & Access	Comply with AS 2890.1	Double garage – some concern over driveway gradient	*No
Private Open Space	Minimum area of 25m ² with a 4mx4m area <1 in 8 gradient. Accessible from living areas and adequate solar access	< 1 in 8 gradient not achieved Balcony with > 15m ² with 2m width over 80% of their areas. Balcony and living area are north facing which achieves adequate solar access	*No Yes
Landscaping Lot 2	130m ²	200m ²	Yes
Height Lot 2	6.2m to Top Plate with 1.7 metres for raked ceilings.	7.9m to Top Plate with an overall maximum of 9.8 metres.	*No
Solar Access	Min 3.5 NATHERS Adequate solar orientation No shading of neighbouring residential buildings	Design has maximised solar access available Proposal is not considered likely to result in any adverse overshadowing.	Yes Yes
Privacy	Section 4.8 of DCP 22	Some concern with proposed dwelling	Yes

		on Lot 2.	
Erosion and Sediment Control	No sediment runoff	To be conditioned.	

* = see Planning Comment

Height (Lot 2)

The proposed dwelling on proposed lot 2 does not comply with the height limits of DCP 22 as the ceiling height exceeds 6.2m above the level of natural ground surface. Clause 24 (2) of KLEP 87 does allow the erection of a two (2) storey building on an allotment where the topography of the site is impracticable to erect a building in compliance with the 6.2 metre limit.

While the site does have a significant fall, the design of the building could be readily modified by lowering the floor levels, with some minor cut, reduction in roof pitch, and modification of the split levels. It is likely that these changes would result in compliance with the height limit.

Access and Car Parking (Lot 2)

The applicant has indicated that access to the proposed lot 2 garage ([Appendix Q](#)) complies with Australian Standard 2890.1 – Off Street Car Parking. However, concern is raised with the longitudinal section of the proposed driveway. The cross fall on the proposed driveway exceeds the maximum permissible amount of 5%. Access into the visitor's car space is 24% over 2.9m with no transition grade. No transition grade is proposed to access the carport from driveway which has a grade of 17%. Vehicles accessing the site would not be able to do so without scraping on the pavement and are likely to have diminished visibility. The driveway access is elevated and no details have been supplied in regard to retaining walls for the driveway.

There is a potential for conflict associated with the common entry and exit over a distance of approximately 20m. The driveway width would not allow vehicles to pass each other leading to the possibility of vehicles reversing back out on to Dulconghi Street with poor visibility.

Dwelling 1 provides a double garage, with the possibility of 2 stacked visitor parking spaces in the front setback area. Dwelling 2 provides a double garage, but limited opportunity for visitor parking due to the shared driveway.

It is considered that the applicant should be required to demonstrate compliance with AS 2890 in a manner that reduces potential conflicts on the access drive within the Dulconghi Street road reserve.

Private Open Space (Lot 2)

Section 4.4 of DCP 22 provides that an area of private open space is to be set aside for each dwelling. The minimum area for each ground floor dwelling is 25m² and should be capable of containing a rectangle of 4m by 4m not steeper than 1 in 8 in gradient. Private Open Space areas are to be orientated to achieve maximum year round solar access and be designed to enable an extension of the dwelling's living area. Both proposed dwellings provide decking as private open space. The DCP allows private open space to be provided as decks and balconies, but this is in respect to dwellings in residential flat buildings located wholly above ground level. The orientation and size of the deck is capable of achieving the requirements of Section 4.4 of DCP 22 and may be considered reasonable in the circumstances. The dwelling incorporates two large decks, the larger being approximately 30 m² and 3.5 metres wide.

Visual Privacy

Section 4.8 of Development Control Plan 22 requires that overlooking of living spaces in buildings and private open spaces are to be avoided. The southern balcony on the proposed dwelling on Lot 2 has the potential to overlook into private space of adjoining dwellings. Because of the topography of the allotment and the height of the balcony providing a privacy screen would be inappropriate. Deleting the balcony's southern extension would alleviate the potential of overlooking and improve visual privacy on adjoining neighbours, without significant loss of amenity to the proposed dwelling. In addition, privacy screens on the western side of the living room and northern verandah is recommended.

Bushfire

As the proposal is in a bushfire prone area and is a residential subdivision, the proposal is Integrated Development pursuant to Section 100B of the Rural Fires Act 1997. Accordingly, the applicant prepared a Bushfire Risk Assessment that was subsequently referred to the Rural Fire Service (RFS) for consideration.

The RFS has not responded to Council at this stage, however any conditions imposed by the RFS would be included should consent be granted.

Public Exhibition

The proposal was advertised in accordance with Council's Advertising Policy with four (4) submissions having been received, one being confidential. [\(Appendix R\)](#) The submissions can be summarised as follows: -

Objection	Planning Comment
<p>1 My concerns are in regards to an old date palm tree which is indicated on the plans for 2 rainwater tanks. If the tree was removed I would lose all my privacy. My house is used for holiday letting which could be impacted upon during construction works/deliveries.</p>	<p>1 Deletion of part of the southern deck and screening of the living room and western side of the northern verandah of dwelling 2 will address privacy issues.</p>
<p>2 The proposed dwelling at Stewart Street is under the minimum allowable lot size and exceeds the height limit.</p> <p>The proposal is not consistent with the existing Stewart Street streetscape.</p>	<p>2 The applicant has submitted a SEPP 1 objection to development standard KLEP 87 Clause 24 (1) d.</p> <p>The proposal complies with the setback requirements of DCP 22. Height reduction is required to be consistent with the streetscape.</p>
<p>3 Lot 1 is only 400m². The dwelling on Lot 2 exceeds Council height limits it comprises 4 levels and is as high as a full 3 storey house. The deck on dwelling at lot 2 will overlook a number a neighbouring properties.</p>	<p>3 Refer to SEPP 1 objection. Height will need to be reduced.</p>
<p>4 The proposal will result in</p>	<p>4 Given that 36 Dulconghi</p>

loss of sea, coast and village views to the north of our residence 36 Dulconghi Street. The proposed development will cause additional traffic problems in Dulconghi Street which is already extremely dangerous.

Street is located on the high side of the street the proposal is not expected to impact on views. The reduction in height will lessen any impacts. Driveway gradients will need to comply with Council standards. Parking provision complies with Council's Parking Code, however, the shared driveway for Dwelling 2 limits the ability to provide off street visitor parking and Dulconghi Street does not provide kerbside parking.

REPORT IMPLICATIONS

- ***Environmental***

The proposal does not require the removal of any substantial or significant vegetation.

Impacts resulting from the development are visual amenity due to the overall height exceeding the limit contained in DCP 22, loss of privacy and water quality.

- ***Social (Financial)***

The proposal will have privacy impacts on neighbours and potential safety and annuity impacts resulting from the steep driveways and access arrangements in Dulconghi Street.

- ***Economic (Financial)***

No significant economic impacts are anticipated.

- ***Policy or Statutory***

The application has been assessed under Section 79(c) of the Environmental Planning & Assessment Act 1979.

- ***Directors Review***

The subject land is within a "Low Density" area under DCP 22.

The proposal is to create an additional dwelling entitlement which requires proposal to comply with all relevant standards.

Whilst it is considered that the merits of the proposal justifies a variation to open space and cut and fill requirements, it is considered that the applicant has failed to justify the significant variations to height and greater consideration of the means of accessing the development from Dulconghi Street is required.

Council has consistently applied DCP 22 in Crescent Head to restrict development in low density areas unless all standards have been met.

The difficulties in providing access was a key criteria identified when restricting development on the steeper parts of Crescent Head.

A variation of the height restrictions to the extent proposed has not been agreed to previously in any part of the Shire.

Approval of the development, as currently proposed, is likely to create an undesirable precedent in the locality and throughout the Shire and amendments should be requested.

RECOMMENDATION:

- A** That the applicant be requested to submit amended plans providing for:
- (a)** reduction in height of dwelling 2 so as to comply with Clause 24 of Kempsey LEP 1987 and DCP 22 – Local Housing Strategy.
 - (b)** deletion of western extension of the balcony on the southern side of proposed dwelling 2.
 - (c)** provision of screening of the western side of dwelling 2, in relation to the living areas and the northern verandah, to protect privacy of the dwelling to the west.
 - (d)** demonstration that the driveway transition grades comply with AS 2890.

- B** That the applicant be advised that unless the requested plans or written advice to submit such plans is received within thirty (30) days of the date of notice being given, that the application will be refused, for the following reasons:
- (a) The proposal does not comply with Clauses 16 and 24 of Kempsey LEP 1987 in relation to lot size and height.
 - (b) The proposal is contrary to Councils Development Control Plan 22 - Local Housing Strategy in regard to height, privacy and access.
 - (c) The proposal will impact on the privacy and amenity of adjoining properties.
 - (d) The proposal is likely to create an undesirable precedent for similar variations in the locality and throughout the Shire.
- C** That the objectors be advised of Council's decision.

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R B Pitt
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES