

DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

15th November 2005

DSDS5	RESIDENTIAL UNIT OVER EXISTING SHOP – 108 GREGORY STREET, SOUTH WEST ROCKS FILE: T6-05-290 TJN
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SUMMARY:

Reporting that Council has received an application to construct a unit over an existing shop which is contrary to DCP 22.

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Applicant: J and P Elrington
Subject Property: Lot 2035 DP 731059
108 Gregory Street, South West Rocks
Zone: 2(b2) "Residential B2"

Description of Proposal

The proposal involves the construction of a two (2) bedroom unit over an existing commercial building containing a commercial laundry and an opportunity shop. [\(Appendix L\)](#)

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 2(b2) (Residential "B2" Zone) under the provisions of this plan. The objectives of this zone are: -

- (a) To allow higher density residential densities in areas with good accessibility to services, employment and recreation facilities.
- (b) To allow the provision of holiday rental accommodation; and

- (c) To restrict the height and bulk of residential and holiday accommodation buildings so that they remain in character with existing development.

The lot is presently under developed given its zoning. The unit being built will allow some form of residential development without major reconfiguration of the site. The site is located close to services, and the built form is in keeping with nearby development.

State Environmental Planning Policy 71

The subject lot falls within the coastal zone as defined by SEPP 71, however the site is not classified as a sensitive coastal location. Council is required to have regard for the matters as set out by Clause 8. [\(Appendix M\)](#)

- 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 not located to any coastal foreshore and will not interfere with public access.
- c) As the site is not located adjacent to any coastal foreshore there is no requirement to enhance existing public access.
- d) The site is located in a mixed commercial/residential area characterized by a reduced street setback. It is considered suitable development having regard for the surrounding area.
- e) The site is not located to any coastal foreshore and therefore will not overshadow any public foreshore reserve.
- f) The surrounding area is predominately urban of a very similar scale and, as such, it will not detract from the scenic qualities of the New South Wales coastline.
- g) The site is cleared meaning that there will be minimal impact upon threatened species of flora and fauna.
- h) There will be no perceived impact upon marine ecosystems.
- i) The lot is situated in an already constructed urban area meaning that there will be no impacts upon wildlife corridors.
- j) There are 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) No items of heritage significance will be damaged or defaced as a result of this proposal.
- m) The applicant will be required to treat stormwater on site to an acceptable level to minimize impacts upon coastal water bodies.
- n) see (l)
- o) Not applicable as no rezoning is proposed.
- p) The proposal is not expected to contribute to any negative cumulative environmental effects.

Clause 16 of this SEPP requires that storm water be treated on-site prior to discharge. This treatment will be conditioned and addressed comprehensively in the Construction Certificate.

State Environmental Planning Policy: BASIX

The application was lodged with Council prior to July 1st 2005 meaning a BASIX certificate is not required.

Development Control Plan 22 – Local Housing Strategy

The proposal is subject to the provisions of Development Control Plan 22 Sections 3 and 4. The subject lot is classified as medium-high density under the provisions of this plan.

STANDARD	REQUIRED	PROPOSED	COMPLIES Y/N
Density	95m ²	459.6m ²	Yes
Setbacks - side - front - rear	1500mm min, 3.5m av 5 m 1500 mm, 3.5 m av	4020mm min, >3.5 m av 1.37 m 4400 mm min, >3.5 m av	Yes No Yes
Carparking - resident - visitor - AS 2890.1	1 Covered 0 AS 2890.1	1 Covered No No turning circle issues however some concern over reversing from the block	Yes Yes Concern
Private open space	15m ² as unit is located entirely above ground level	19m ²	Yes
Landscaping - area - plan	40m ² Endemic plant species	>40m ² To be conditioned	Yes Yes
Height	6.2m to top plate	6.0m to top plate	Yes
Solar access - sunlight - energy smart	Section 4.7	No major overshadowing or solar issues. A NatHERS certificate will be required prior to release of the Construction Certificate.	Yes
Privacy	Section 4.8	No major privacy issues	Yes
Cut and fill	1.5m max cut/fill	No cut/fill	Yes
Erosion/sediment control	Section 4.10	To be conditioned	Yes
Infrastructure	Section 4.11	To be conditioned – stormwater to eventually drain in line to be constructed on adjacent lot.	Yes

Primary Street Setback

The existing building has been constructed on a variable street setback, varying from 1.37 metres, up to 6 metres. The applicant seeks to place the unit above the existing building, utilising this partially diminished setback. Council should be prepared to consider varying the setback for a number of reasons: -

While the land is zoned 2(b2), it is an area that is essentially a neighbourhood commercial precinct. The surrounding blocks have buildings and street setbacks as follows: -

- 1 98 Gregory Street is a two storey building which houses the South West Rocks Dive Centre and a Fishing Tackle shop. It is constructed on a similar shaped block, with a similar street setback to the proposal.
- 2 102 Gregory Street houses a supermarket, car park and a service station. The service station has been constructed on a similar setback to the existing surrounding development. Whilst it is only essentially a one storey building, the height of the building and awning present as being substantially higher than a typical single storey dwelling.
- 3 110 Gregory Street is currently occupied by a motel. Buildings on the site share the same building alignment as the existing commercial building on 108 Gregory Street.

The attached aerial photograph of the area shows the consistency of the diminished street setbacks within the area immediately adjacent to the subject lot. [\(Appendix N\)](#)

In light of the setbacks in the surrounding structures, and the current location of the building on the subject lot, a 5m setback to the second storey redevelopment is considered unnecessary.

Car Parking

The proposal allows for a carport with access to be gained directly off Gregory Street. This is to be located on the southern side of the lot. There is an existing access to a car space on the northern side of the lot. The issue of creating a second driveway that requires reversing from the lot adjacent to a busy shopping centre and motel is of concern. However there is considered merit to allowing a second driveway crossing on the lot allowing vehicles to reverse onto Gregory Street: -

- 1 The majority of houses along Gregory Street reverse onto the road. A further development of 1 additional dwelling unit is considered as not substantially adding to any traffic issues that may arise due to reversing vehicles.

- 2 It is impossible to develop the lot in a manner that allows vehicles to exit the site in a forward direction given the location of the current building.
- 3 The car-space on the northern side of the lot serves as employee parking for the current commercial outlets. The traffic movements associated with space are considered to be minimal, perhaps as little as two per day, with these being before and after hours. Given the proximity of the unit to essential facilities such as shops and schools, the traffic movements anticipated to be associated with occupants of the unit are also low. As such, the increased traffic movements associated with a second driveway crossing allowing reversing into a busy commercial precinct are considered not to have a substantial negative impact upon traffic flows within the area.

Noise

The proposed unit is located directly above an approved commercial laundry (T20-83-197). Through imposition of development consent conditions, this laundry is only able to operate for eight (8) hours per day between the hours of 7am and 7pm. It is considered that noise emanating from the washing machines will not adversely affect the occupants of the units. Compliance with the Building Code of Australian Sound Transmission provisions will ensure the unit has acceptable internal noise levels.

Advertising

The proposal was advertised in accordance with Council's Policy with no objections being received.

REPORT IMPLICATIONS:

- ***Environmental***

The applicant will be required to treat stormwater on-site prior to discharge to Council's system. Once this has been addressed it is considered that there will be no adverse environmental outcomes.

- ***Social***

There are no perceived social implications as a result of this application.

- ***Economic (Financial)***

The proposal will bring an economic benefit for the period of construction only.

- ***Policy or Statutory***

The proposal complies with all the relevant SEPPs, the LEP and the NCREP 1987. The departure from the provisions of DCP 22 is considered justifiable in this instance.

RECOMMENDATION:

- A** That Council vary the provisions of DCP 22 in relation to the front setback to allow the development.
- B** That the application be approved subject to the following conditions:
- 1** The development referred to in this application is to be carried out substantially in accordance with the approved development plans as modified by any conditions of this consent.
 - 2** This consent has been issued on the basis that Council has been appointed as the Principal Certifying Authority and Council has accepted the appointment and will be issuing the construction certificate.
 - 3** This consent does not permit commencement of any works. Works are not to commence until such time as a Construction Certificate has been obtained. A Construction Certificate may be obtained from Council upon application being made or from an accredited certifier.
 - 4** A Construction Certificate shall not be issued until all relevant conditions of this consent have been complied with.
 - 5** Two days prior to commencing work, Notice of Commencement of Building or Subdivision work and Appointment of Principal Certifying Authority is to be submitted to Council.
 - 6** The proposed unit over existing shop is not to be occupied prior to the issue of an Occupation/Interim Occupation Certificate by Council.

An application for a certificate is enclosed. It is requested that it be completed and returned to Council prior to requesting an inspection. A minimum of 48 hours notice is necessary when requesting the inspection. Appointments will be made in accordance with the inspection program for that area.

- 7 The building is not to be occupied until all conditions of Council's consent have been complied with and an Occupation Certificate has been obtained from Council or an accredited certifier and submitted to Council.**
- 8 Before the commencement of site works, demolition or building, the following activities must be completed:**

 - a Installation of soil erosion and sedimentation control devices.**
 - b Installation of safety fencing/hoardings between the property and the street**
 - c Protection barriers for existing trees**
 - d Installation of builder's toilets**
 - e Installation of signage in prominent, visible position including -**

 - "Unauthorised site entry is prohibited"**
 - Name and phone number of builder or other responsible person for contact outside working hours.**
- 9 A schedule of the fire safety measures which are to be installed in the building is to be submitted with the required Construction Certificate for approval together with the minimum Standard of Performance as identified in Clause 80B and C of the Environmental Planning Assessment Regulation 1994.**

Detailed plans of each measure prepared by a suitably qualified person are to be submitted for approval with the required Construction Certificate.
- 10 A Complying Development Certificate is to be obtained for all advertising structures prior to their placement. Where proposed signs do not comply with DCP No 25 – Advertising Signs, prior to development consent will be required.**
- 11 Submission of an application(s) to Council pursuant to Section 68 of the Local Government Act 1993 for the following, prior to the issue of a Construction Certificate:-**

 - a Carrying out water supply work.**
 - b Carrying out sewerage work.**
 - c Carrying out stormwater drainage work.**

- 12 Compliance with the Building Code of Australia (BCA).**

All building work must be carried out in accordance with the requirements of the Building Code of Australia. A Construction Certificate shall not be issued until the Principal Certifying Authority (PCA) is satisfied that the plans and specifications comply with the BCA

- 13 All excavation and backfilling are to be executed safely and in accordance with appropriate professional standards, and are to be properly guarded and protected to prevent them from being dangerous to life or property.**

- 14 If the excavation is to extend below the level of the base of the footings on an adjoining allotment, the person causing the excavation shall:**

- (a) preserve and protect such building from damage; and**
- (b) if necessary, underpin and support the building in an approved manner.**

Seven (7) days notice is to be given to the owner of the adjoining allotment of the intention to excavate below the level of the base of the footings. (Reference: Clause 34, Local Government (Approvals) Regulation 1993).

- 15 Hoarding/fence is to be provided to the site in accordance with the assessment provided to Council.**

- 16 Details of proposed hoarding to be submitted, in writing, prior to the commencement of building operations.**

- 17 A builder's toilet complying with Clause 78I of the Environmental Planning and Assessment Regulation, and connected directly to the sewer is required on site throughout the entire building operation.**

Note: Clause 78 I requires that the toilet must be provided before any work is commenced.

- 18 The building has been assessed by Council under the provisions of the BCA as a Class 4,6 building having a rise of 2 storeys. The building is**

required to be constructed in Type C fire resistance construction. It is the builders responsibility to ensure that all building elements have the minimum fire resistance level specified in Specification C1.1 Table 5 of the Building Code of Australia.

- 19 Every part of the building must be constructed in a proper and workmanlike manner to achieve the required level of performance, using materials that are not faulty or unsuitable for the purpose for which they are used.
- 20 The hours of operation of the activity are to be confined to 7.00 a.m. to 6.00 p.m., Mondays to Fridays, and 7.00 a.m. to 12 noon, Saturdays.
- 21 Submission of a detailed landscaping plan providing for the establishment of suitable species endemic to the area, including the number and species of plants to be planted and the means of establishing the landscaping beds prior to release of the Construction Certificate.
- 22 Runoff and soil erosion controls shall be installed in accordance with the approved Erosion Control prior to work commencing on the site. The controls shall incorporate:-
 - a diversion of uncontaminated upslope runoff around cleared and/or disturbed areas and areas to be cleared and/or disturbed.
 - b sediment control fences at the downslope perimeter of the cleared and/or disturbed area to prevent unwanted sediment and other debris escaping from the land.
 - c maintenance of all erosion control measures at maximum operational capacity until the land is effectively rehabilitated and stabilised beyond the completion of construction.

Protection of any kerb inlet pit located downstream of the site in accordance with Council's Engineering Guidelines for Subdivision and Development (Drawing No SW20).

Note:

- i. Any roof drainage system is to be connected to the required discharged point at the building frame inspection stage.
- ii. Any material spilled or deposited on the road reserve or in the gutter is to be removed immediately.

23 Information to be provided with the Construction Certificate:-

- 1 Provide two specifications for the class 4,6 building detailing the appropriate clauses of the BCA and relevant Australian Standards for the works to be constructed.
- 2 Submit details of the cool rooms smoke and flammability index specifications.
- 3 The applicants consultants with the appropriate engineering discipline are to provide BCA certified plans and specifications for the following:-
 - Portable free extinguishers complying with section E 1.6 of the BCA and AS 2444-1995
 - Smoke Hazard Management systems complying with Specification E 2.2a of the BCA. Note: This may require the class 6 to be designed to activate the class 4 area.
 - The installation of plumbing and drainage complying with AS 3500 1,2,3 and 4 and the NSW Code of Practice: Plumbing and Drainage.

24 Submit amended architectural drawings indicating the following:-

- Details existing shops fire resistance level upgrade.
- The fire resistance level for each building element complying with Section C Specification C1.1 Clause 3.1 and Table 3.1 of the BCA.
- Provide Sound Transmission and insulation levels achieved for the floor of the building.
- The location and method of penetration of walls, floors and ceilings by services complying with Specification C3.15.

25 A Structural Engineers Certificate stating that the existing structure is capable of carrying the additional structure and dead loads of the addition is to be submitted prior to release of the Construction Certificate.

26 Submission of an application for a Certificate of Compliance pursuant to Section 305 of the Water Management Act 2000 and the lodgement of a Certificate of Compliance indicating that the requirements of Section 306 of the Water Management Act 2000 have been met, prior to release of the Subdivision Certificate/Construction Certificate.

You are advised that a Certificate of Compliance pursuant to Division 5 of the Water Management Act 2000 will be issued by Council, subject to the following matters being complied with:-

a Payment of a contribution towards the augmentation of sewerage headworks at the rate of \$2,302 per equivalent tenement, i.e $\$2,302 \times 0.66 \text{ E.T} = \$1,519.32$. (Indexed 2005/2006)

b Payment of a contribution towards Kempsey District Water Supply Scheme at the rate of \$1,256 per equivalent tenement i.e. $\$1,256 \times 0.66 \text{ E.T} = \828.96 (Indexed 2005/06).

27 The applicant is to pay a contribution towards the embellishment of open space and ancillary facilities for each additional dwelling unit after the first unit in accordance with Council's Section 94 Plan for Outdoor Recreation. The contribution is to be paid prior to the release of the Construction Certificate/Subdivision Certificate, at the rate prevailing at that time. The current rate is \$1,953 per additional equivalent tenement, i.e $\$1,953 \times 0.66 \text{ E.T} = \$1,288.98$. (Indexed 2005/2006)

A copy of Council's Section 94 Plan may be inspected at Council's offices, Corner Elbow and Tozer Streets, West Kempsey.

28 All roof waters are to be disposed to the stormwater system to Gregory Street. Engineering design details are to be submitted to Council for approval prior to issue of the Construction Certificate.