



DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

12th September 2006

DSDS7	DEMOLITION OF 3 DWELLINGS, LOTS 1, 2 & 3 DP 334317 28, 30, 32 TOZER STREET, WEST KEMPSEY FILE: T6-06-216 TJN
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SUMMARY:

Reporting that Council has received an application to demolish three dwellings located within a proposed Conservation Area, as identified within the draft Kempsey Shire Community Based Heritage Study.

This report should be read in conjunction with Confidential Report DSDS1.



Applicant: O'Donnell and Hanlon Pty Ltd
Subject Property: Lots 1,2, & 3 DP 334317 28, 30 & 32 Tozer Street, West Kempsey
Zone: 2(a) Residential

Proposal

The applicant proposes to demolish three (3) dwellings located over three lots, leaving the land vacant for future development.

History

At its meeting of 18th July 2006 Council resolved: -

"That this matter be deferred pending completion of the exhibition period for the Community Based Heritage Study."

As the exhibition period for the Community Based Heritage Study expired on August 12th 2006, the matter is submitted for Council's consideration.

Heads of Consideration

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

Kempsey Local Environmental Plan 1987

The subject land is zoned 2(a) (Residential "A") and the proposed demolition is permissible within the zone with development consent.

There are no draft Local Environmental Plans or Development Control Plans that affect the proposal.

Heritage

The Kempsey Shire Community Based Heritage Study which recently finished exhibition identifies the dwellings as falling within the proposed West Kempsey Conservation Area to be identified in a DCP. [\(Appendix J\)](#) The study states that many dwellings located behind Elbow Street are good examples of traditional timber houses and brick and tile houses. The architectural styles include federation and bungalow type dwellings which give the streetscape a distinctive character. It is suggested that the character of the area can be protected through a Heritage Conservation Area designated within a Development Control Plan.

Whilst the draft study has no statutory standing, Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979 provides Council with broad discretionary powers in considering the impacts of the proposal, including heritage significance of the building.

As stated in the previous report, Council's Heritage Officer has identified one of the dwellings, the brick building on 28 Tozer Street as contributing to this distinctive streetscape and therefore has heritage value, making it worthy of retaining.

NSW Heritage Office

Council has also received correspondence from the NSW Heritage Office [\(Appendix K\)](#), in which the Department raises concerns that the Community Based Heritage Study is being used as a vehicle to encourage demolition of identified heritage items. The Department has requested that Council refuse the application, pending the completion of the exhibition period for the Community Based Heritage Study and the adoption of a DCP for the proposed conservation area.

It should be noted that should Council to decide to act on the Department's request, in the event of an appeal, the Department would not be a party to any proceedings, the cost of which would be borne by Council.

It should also be noted that should the Department consider the buildings to be of such significance as to warrant protection, the Department has the power to either "call in" the applications for determination or to issue an Interim Heritage Order. The Department has not indicated that it is prepared to exercise either option.

Nabutu P/L –V- Kempsey Shire Council – Land and Environment Court Decision

In assessing the merits of the current proposal in relation to the heritage aspects of the buildings, Council should take into account the judgement made by the Commissioner of the Land and Environment Court in the matter of Nabutu Pty Ltd v Kempsey Shire Council. In upholding the appeal against Council's refusal of an application to remove a building identified for listing under Council's Draft Heritage Study, the Court put little weight on the inclusion of the building in the Study noting that the building was not a listed heritage item.

Planning Comment

Having regard to the matters relevant to Council's consideration of the proposal, it is considered that it would be difficult to justify refusal of the application for the following reasons: -

1. The proposal is consistent with the current statutory planning considerations relating to the land.
2. The identification of the West Kempsey Conservation Area within the Draft Kempsey Shire Community Based Heritage Study has no binding statutory effect.
3. The dwellings are not identified for individual listing within a Draft LEP. Whilst the buildings contribute to the heritage character of the area, they do not have significant heritage value when assessed individually. The Conservation Area relates specifically to the streetscape aspects of the area. Council would find it hard to justify refusal of the demolition of the dwellings based on adverse impacts upon this identified streetscape.

REPORT IMPLICATIONS:

- ***Environmental***

There will be no adverse environmental outcomes as a result of this application provided appropriate measures are put in place to prevent erosion once demolition has taken place. The consent will be conditioned accordingly.

- ***Social***

The proposal will result in the loss of buildings identified in an area nominated as a future conservation area. However this is not considered to be a significant impact.

- *Economic (Financial)*

No significant impacts.

- *Policy or Statutory*

The proposal is considered to be consistent with the relevant heads of consideration.

RECOMMENDATION:

That the proposal be approved subject to the following conditions:-

Demolition

- 1 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.

- 2 The following inspections are required to be made and a minimum of 48 hours notice is necessary where requesting an inspection. Appointments will be made in accordance with the inspection program for the area. Where inspections are carried out by an accredited certifier other than Council, compliance certificates will be required following each inspection and forwarded immediately to The Principal Certifier.**

Inspections required:

- (a) Pre Commencement inspection**
- (b) Final inspection**

- 3 All demolition waste is to be disposed of to Council's Waste Transfer Station.**

- 4 All material in the building which contains asbestos shall be removed in accordance with the guidelines of the WorkCover Authority and the requirements of the Environmental Protection Authority.
- 5 The existing structure is to be removed and a Construction Certificate obtained prior to commencement of new works.
- 6 The hours of construction 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.
- 7 All loading and unloading in connection with the use of the subject premises shall be carried out wholly within the subject property.
- 8 Building materials are not to be stored within the road reserve or any other public place.
- 9 Excavated material from the site is not to be placed within the road reserve or any other public place.
- 10 Before work commences, the Council must be informed in writing of the name and contractor licence number of the licensee who has been contracted to do or intends to do the work.
- 11 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.
- 12 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).

- 13 Hoarding/fencing is to be provided to the site in accordance with the assessment provided to Council, prior to commencement of site works.

A sign is to be provided in a prominent and visible position (on the building or fence) stating "Unauthorised entry to the site is not permitted", together with the name of the person responsible for the site and a contact number outside working hours.

- 14 Demolition shall be carried out in a safe manner without danger to the public.**
- 15 Prior to demolition commencing, the person causing the demolition to be carried out shall give written notice of intention to the owners of any adjoining allotment of land seven (7) days prior to commencement of demolition works.**
- 16 The demolition process and associated temporary structures are not to interfere with the day to day running of adjacent business, car parking areas, and pedestrian access.**
- 17 Prior to demolition occurring details are to be submitted outlining how it is proposed to stabilise soil on the site post demolition to ensure that no soil erosion occurs on the vacant lots.**

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R B Pitt
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES