



## **DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT**

12<sup>th</sup> September 2006

**DSDS8                    DEMOLITION OR REMOVAL OF DWELLING  
FILE: T6-06-255 and T6-06-256 TJN**

### **SUMMARY:**

Reporting that Council has received two applications to demolish or remove two dwellings on adjoining lots which are listed in the Draft Heritage Study and for which objections have been received.

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

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**Applicant:** L LeNeve, K Finch, C & R Neech  
**Subject Property:** (DA T6-06-256) Lot 3 DP 963050  
6 Paragon Avenue, South West Rocks  
(DA T6-06-255) Lot 2 DP 963050  
4 Paragon Avenue, South West Rocks  
**Zone:** 3(v) Business (Village) "V" Zone

### **Proposal**

The applicant proposes to demolish (either demolish on site or relocate) two existing dwellings located on adjoining lots. At this stage no approval for redevelopment of the site is being sought.

### **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 to the proposal.

### **Kempsey Local Environmental Plan 1987.**

## Clause 9

Clause 9 provides that Council shall not consent to the proposal unless it is satisfied that the proposal is consistent with the objectives of the zone. The subject lot is zoned 3(v). 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 of South West Rocks.
- b) To prevent development which would inhibit the establishment of a new town centre.

The proposed demolition/removal of the dwellings will allow the site to be more intensively developed, potentially as a mixed commercial/residential development. The proposal would facilitate future redevelopment of the site that would serve to consolidate the functions of the South West Rocks town centre and make available a larger array of use options than currently exists and is therefore considered to be consistent with the zone objectives.

## **State Environmental Planning Policy 71 – Coastal Protection**

The subject lot is contained wholly within the Coastal Zone as defined by SEPP 71. In assessing the proposal Council is to have regard for the following matters as listed in clause 8 of SEPP 71: [\(Appendix L\)](#)

- a) ***the aims of SEPP 71 as set out in clause 2.***  
The policy aims to protect cultural attributes of the NSW coast. See "Heritage". The proposal complies with all other aims as identified under s2 of the policy.
- 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.***  
The proposal is located a substantial distance from any coastal foreshore and will not interfere with any public access to the foreshore.
- c) ***opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability.***  
As the site is not located adjacent to any foreshore there is no requirement to enhance any existing public access.
- d) ***the suitability of development given its type, location and design and its relationship with the surrounding area***  
No new construction is proposed in this application.

- e) ***any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,***  
No new construction is proposed in this application.
- f) ***the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,***  
The subject lot is not visible when viewed from any major scenic vantage points, e.g. Horseshoe Bay Reserve. The issue of the cottages contribution to the character of the area is related primarily to their heritage and amenity value rather than scenic qualities.
- g) ***measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995 ) and plants (within the meaning of that Act), and their habitats,***  
The site is an existing developed site within a commercial zone meaning there will be minimal impacts upon threatened species of flora and fauna.
- 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.***  
There will be no significant impacts upon marine ecosystems.
- i) ***existing wildlife corridors and the impact of development on these corridors.***  
The lot is within a cleared commercial area meaning there will be no impacts on wildlife corridors.
- j) ***the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards.***  
There are no perceived impacts upon coastal processes.
- k) ***measures to reduce the potential for conflict between land-based and water-based coastal activities.***  
The site has no foreshore frontage so conflict between land and water based activities will be negligible.
- l) ***measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals.***  
It is considered that the site contains little or no cultural significance to aboriginal people.
- m) ***likely impacts of development on the water quality of coastal waterbodies***  
The applicant will be required to place erosion and sediment control devices on site to ensure that no materials will leave site, reducing

the potential for the proposal to adversely impact upon coastal water bodies.

- n) ***the conservation and preservation of items of heritage, archaeological or historic significance***  
See "Heritage".
- 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 applicable as no rezoning is proposed.
- p) ***only in cases in which a 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***It is considered that the proposal will not have a significant negative cumulative effect on the natural environment.

## **Development Control Plan 34 – South West Rocks Town Centre**

The subject lot is located within Precinct 2 – Village Commercial, as identified by the DCP. The intent of the DCP within this precinct is to encourage a vibrant commercial centre concentrating on the needs of both locals and tourists. Demolition of the dwellings will allow the site to be redeveloped in a manner that will achieve the intent of the DCP.

In relation to the retention of cottages to retain the seaside village theme, Precinct 4 identifies a row of cottages fronting Livingstone Street as greatly contributing to the amenity of the area. The DCP makes specific allowances for the use of these cottages.

## **Heritage**

### Heritage Study

A copy of the assessment contained within the Draft Kempsey Shire Community-Based Heritage Study is included for Council's information [\(Appendix M\)](#). The basis for including the dwellings in the Draft Heritage Study is that the cottages represent the type of buildings erected in the 1920s and 1940s as holiday homes.

The Draft Kempsey Shire Community-Based Draft Heritage Study which has recently been exhibited. Whilst the draft plan 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.

Council's Heritage Advisor confirms that the buildings have local heritage significance having been built in 1924(No 4) and the 1943(No 6) both with minor subsequent additions. The buildings are both in reasonable condition used for holiday accommodation.

The significance of the cottages is their association with the early development of the town as an outdoor recreational holiday village with the cottages becoming rare examples of the early holiday seaside town.

The Heritage Advisor recommends that a demolition holding order be placed on the property and consideration of adequate/adaptive use be determined to keep the property intact.

### Applicant's Submission

The applicant has made a submission to Council objecting to the buildings being listed as heritage items that may be summarised as follows:- [\(Appendix N\)](#).

- 1 Concerns raised over the process undertaken in preparing the Study.
- 2 The lack of financial viability of retaining the cottages for rental accommodation.
- 3 The fact that Paragon Ave is used as a service laneway for commercial developments, including associated impacts.
- 4 The purchase of No 6 was a commercial decision based on the development potential of the site with No 4. Council made a similar decision in purchasing the property in Landsborough Street which is not proposed to be listed.
- 5 Why have cottages been identified as having heritage significance when many other similar buildings have not?
- 6 The buildings have no particular design significance.
- 7 Owner should not bear the cost of retaining the heritage significance of the buildings.

### NSW Heritage Office

Council has also received correspondence from the NSW Heritage Office [\(Appendix O\)](#) in which the Department raises concerns that the demolition/removal of the dwellings would substantially degrade the heritage significance of the Paragon Avenue Precinct. The Department has requested that Council refuse the two applications (T6-06-255 and T6-06-256) pending the completion of the exhibition period for the Community Based Heritage Study and the revision of Council's LEP to reflect the

inclusion of any additional heritage items that may result from the process.

It should be noted that should Council 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 & 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.

### Heritage Committee Meeting 24 August 2006

The Heritage Committee considered all the submissions from exhibition of the Community Based Heritage Study at its meeting of 24 August 2006. Whilst the Committee was disappointed that objections had been received from land owners in relation to the dwellings in South West Rocks, the Committee was prepared not to recommend pursuing listing of the items that had been objected to by the owner if it meant that the Study would move forward with protection of those items that were not the subject of objection from the land owner.

### Planning Comment

Having regard to the matters relevant to Council's consideration of 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. Council's current stated policies related to development of the land, expressed by the current commercial zoning and DCP 34 seek to encourage consolidation and redevelopment. Retention of the buildings is not consistent with the type of development planned for the area.
2. The identification of the building in the Draft Kempsey Shire Community-Based Heritage Study as a potential Item of

Environmental Heritage has no binding statutory effect and Council has not provided any indication that it will support listing of the building under Kempsey Local Environmental Plan 1987.

3. The buildings do not appear to have any special significance that sets them apart from buildings represented elsewhere within South West Rocks, within residential zones and within a more appropriate streetscape with examples being listed within the Draft Heritage Study.

Based on the conditions imposed by the Court in relation to the Sherwood Anglican Church relocation, it is considered appropriate to require: -

- Appropriate signposting of the site to acknowledge the former use of the land, and to provide information to the community concerning the history of the site relative to development of South West Rocks.

## Public Notification

The proposal was publicly notified in accordance with the requirements of Council's policy with one (1) objection [\(Appendix P\)](#) received.

Objection	Planning Comment
1 The Heritage Study should be allowed to run its course before any applications of this kind are considered.	1 Council is obliged to accept and assess the applications.  Regardless of the status of the study, Council is still required to take into account heritage matters when assessing the application.
2 Believe that the application is a blatant attempt to thwart the aims of the study for private gain and any support by Council would amount to complicity in that exercise.	2 See planning comment 1.
3 Citing the possibility of legal proceedings as a reason to approve an application amounts to an abrogation of Council's duty to impartially consider matters on their merits.	3 Council would be abrogating its duty if it ignored the outcome of previous Court proceedings which are directly relevant to the proposal.

4 The removal of heritage buildings to create unoccupied sites is detrimental to the South West Rocks Community.	4 In this instance, removal of the dwelling will enable the site to be more intensively developed in accordance with the zone objectives and current Council policy.
5 Call on the Council not to consider this, and other like applications at least until the study process has been completed.	5 See Point 1

## **REPORT IMPLICATIONS:**

- ***Environmental***

***No significant environmental impacts are anticipated as a result of the development. Appropriate conditions of consent will control issues of site management.***

- ***Social***

***While there will be a loss of physical evidence of the history of the village of South West Rocks, this loss is not considered to be of sufficient significance to justify refusal of the application, given current statutory controls relating to the land. Proposed mitigation of impacts are the requirement to seek a suitable relocation of the building rather than demolition, the preparation of a Heritage Assessment Report to document the existence of the building and the link it provided to the development of the village, and appropriate signposting of the site.***

- ***Economic (Financial)***

***Removal of the building will enable the site to be developed for its zoned purpose, which will provide for the orderly and economic development of the land and the South West Rocks Town Centre.***

- ***Policy or Statutory***

***The Environmental Planning and Assessment Act 1979, provides that the applicant is able to consider the application as being deemed as refused if it has not been determined within forty (40) days. A letter has been received from the applicant's solicitors demanding that the application be determined at Council's meeting of 12 September 2006, and indicating their intention to appeal if the application is refused.***

## RECOMMENDATION

**A That the DAT6-06-255 and DAT6-06-256 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 does not permit the demolition of the dwelling except by way of relocation to an approved site.**
- 3. The applicant is to gain any necessary approval from the Roads and Traffic Authority of NSW Police prior to removing the building from the site.**
- 4. The applicant is to have Police approval to relocate the building. A copy of the Police approval is to be submitted to Council prior to removal of the building.**
- 5. The applicant is to ensure the contractor for relocating the building has all the necessary insurance for transporting the building on a roadway.**
- 6. A copy of the Heritage Assessment prepared shall be submitted to the Macleay Historical Society for archives and Council Library.**
- 7. The erection of an interpretation sign is to be located on the site. The sign is to illustrate the building and provide historical information and indicate its new location. This is required within three (3) months of removal of the building with details to be submitted to Council, to the satisfaction of Council's Heritage Advisor prior to erection.**
- 8. The works associated with the removal of the building are to be confined to 7.00am to 6.00pm, Monday to Friday and 7.00am to 12 noon Saturdays.**
- 9. Demolished materials are not to be stored within the road reserve or any other public place.**
- 10. Demolition of the building shall be carried out in accordance with the requirements of Australia Standard 2601-1991 where applicable.**
- 11. Prior to demolition commencing the person causing the demolition to be carried out shall give written notice of**

his intention to the owners of any adjoining allotment of land seven (7) days prior to the commencement of demolition work.

12. Access to the site shall be restricted to Authorised Persons Only, and the site shall be secured against unauthorised entry when building work is not in progress or the site is otherwise occupied.
13. Before the commencement of the site works, 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 signage in prominent, visible position including:
    - "Unauthorised site entry prohibited"
    - Name and phone number of builder or other responsible person for contact outside working hours
  - e) Disconnection of all services by registered tradesman, and to be to Council requirements in relation to Council services.

B. That the objector be advised of Council's decision.

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R B Pitt  
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES