



KEMPSEY
Shire Council

DIRECTOR SUSTAINABLE DEVELOPMENT REPORT

12th December 2006

DSDS3	REMOVAL OF DWELLING LOT 1 DP 784613 & LOT 1 DP 947697 No 25-27 PARAGON AVENUE, SOUTH WEST ROCKS FILE: T6-06-504 TJN {Folio No. *}
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SUMMARY:

Reporting that Council has received an application to remove a building listed within the Draft Heritage Study (known as Ranges Retreat) for which objections have been received.

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Applicant: Mr E Ball
Subject Property: Lot 1 DP 784613 & Lot 1 DP 947697 No 25-27
 Paragon Avenue, South West Rocks
Zone: 3(V) Business (Village) "V" Zone

Background

At its meeting of 13th June 2006 Council granted approval to relocate the dwelling on 25-27 Paragon Avenue, South West Rocks, to 12-14 Cooper Street, Spencerville. The applicant subsequently sought a modification to the development consent to allow for the removal of the dwelling to an unspecified location. Council advised that it was unable to consider the changes within the scope of Section 96 of the Environmental Planning and Assessment Act 1979. A fresh development application was then lodged.

Proposal

The applicant proposes to remove the existing dwelling on the site to an unspecified location. 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 removal of the dwelling 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 within clause 8 of SEPP 71 ([Appendix D](#)):

- a) **The aims of this Policy 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 Section 2 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 located a substantial distance from any coastal foreshore there is no requirement to enhance any existing public access to the foreshore.

- (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 its heritage 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 development 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 the site to ensure that no materials will leave the site, reducing the potential for the proposal to adversely impact upon coastal waterbodies.

- (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 Development Control Plan. The intent of the Development Control Plan within this precinct is to encourage a vibrant commercial center concentrating on the needs of both locals and tourists. Demolition of the dwelling will allow the site to be redeveloped in a manner that will achieve the intent of the Development Control Plan.

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

Heritage

A copy of the assessment of the dwelling contained within the Draft Kempsey Shire Community-Based Heritage Study is included for Council's information (Appendix E). The basis for including the dwelling within the Draft Heritage Study is that it is associated with the development of the town as a seaside resort.

The Draft Kempsey Shire Community-Based Heritage Study 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. The heritage significance of the dwelling is also required to be assessed in accordance with the aims and objectives of Kempsey Local Environmental Plan 1987.

Clause 3 – Aims and Objectives of KLEP 1987 states that the plan aims“:

- (Objective g) to protect cultural and natural resources from damage and destruction;
- (Objective m) to conserve and enhance the environmental heritage of Kempsey Shire.

Additionally, the North Coast Regional Environmental Plan 1988 includes within its objectives the following (Clause 34):-

- a) to conserve the environmental heritage (including the historic, scientific, cultural, social, archaeological, architectural and aesthetic heritage) of the North Coast Region),
- b) to promote the appreciation and understanding of the North Coast Regions distinctive variety of cultural heritage items and conservation areas including significant buildings, structures, works, relics towns and precincts,
- c) to encourage the conservation of the Regions historic townscapes which contain one or more buildings or places of heritage significance or which have a character and appearance that is desirable to conserve.

NSW Heritage Office

After the previous development application pertaining to the removal of the dwelling was approved, the Department of Planning Heritage Office raised concern, stating that it did not support the relocation of heritage items in the absence of exceptional circumstances. It was requested that pending the amendment of the Kempsey Local Environmental Plan 1987 to include the items identified within the Community Based Heritage Study, Council refuse development applications for the demolition/removal of identified future heritage items.

It should be noted that should Council decide to act upon the Departments advice, 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 any building to be of such significance as to warrant protection, the Department has the power to either "call in" the application for determination or to issue an Interim Heritage Order. The Department has so far remained unwilling to exercise such powers with regards to development applications for the demolition/removal of heritage items identified in the draft Study.

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 of the Commissioner of the Land and Environment Court in the matter of Nabutu Pty Ltd and 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 in the inclusion of the building in the Study, noting that the building was not a listed heritage item.

Heritage Committee Meeting 24th August 2006

The Heritage Committee considered all 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 heritage items, the Committee was not prepared 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.

The owner of this dwelling placed an objection to the proposed heritage listing during the exhibition period (Appendix F).

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. 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 it will support listing of the building under Kempsey Local Environmental Plan 1987.

Should Council decide to defer consideration of the application until exhibition of a draft LEP listing the property as an item of environmental heritage, the development application would not be able to be placed on hold, meaning that after 40 days the applicant is able to deem the application to be refused and commence proceedings in the Land and Environment Court.

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.
4. Council has previously approved a development application to remove the dwelling from the site to a site within Cooper Street, Spencerville. Additionally, approval has recently been given for the removal of the two dwellings directly opposite the subject lot which were also included within the Draft Community Heritage Study.

Based on 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, relevant to development of South West Rocks.

Public Notification

The proposal was publicly notified in accordance with the requirements of Council's policy with five (5) objections received.

The grounds for objections may be summarized as follows: (Appendix G, part 1, part 2)

Objection	Planning Comment
1 Council is required to have regard for the aims and objectives of environmental planning instruments when making decisions. Accordingly, Council must give consideration to the preservation of local environmental heritage in determining the application.	1 The heritage significance of the dwelling has been assessed in accordance with the relevant heads of consideration. This includes the aims and objectives of the North Coast Regional Environmental Plan 1988 and the Kempsey Local Environmental Plan 1987.
2 Removal of the Range's Retreat before it gains the benefit of the protection of local heritage listing as recommended is not in the public interest. In light of this, Council cannot grant consent to the application.	2 The Community Based Heritage Study is not a relevant head of consideration, therefore Council is not required to have regard for its contents. It is however necessary to assess the heritage significance of the proposal in light of heads of consideration as identified by s79C(1) of the EP&A Act 1979.
3 The removal of the house would put the heritage value of Paragon Avenue at risk and detract from its overall value as a place of heritage significance.	See "Heritage" 3 See "Heritage"
4 This dwelling has many architectural features in design representing how buildings were constructed in this period at South West Rocks.	4 See "Heritage"
5 The dwelling has heritage significance and Council should look at all avenues to the Heritage Trust to have this dwelling listed to preserve our town's heritage.	5 Neither the Heritage Trust, nor the New South Wales Heritage Office have exercised the powers they have to list the item under the provisions of the Heritage Act 1977.
6 Loss of this house would let our ancestors and towns folk down and would ruin the appeal of our town's character and tourism appeal.	6 See "Heritage"
7 There should be no attempt to remove this building or any other building similarly listed in the vicinity, until the	7 See "Heritage" See Planning Comment 2

<p>outcome of the Community Based Heritage Study has been made known and adopted by Council.</p>	
<p>8 Considering that the Community Based Heritage Study received State Government funding, to allow removal of the building prior to adoption of the study would amount to an interference in the process.</p>	<p>8 Council is obliged to assess the application based on the current planning controls applicable to the land at the time the application was lodged.</p> <p>See "Heritage"</p>
<p>9 Proposal to remove the cottage appears to be motivated only by a desire to sell the property as a development site.</p>	<p>9 It is clear that the removal of the dwelling from the site will enable the site to be more intensively developed. This is supported by current planning controls applying to the land.</p>
<p>10 The restored house is one of the few remaining older intact buildings in South West Rocks.</p>	<p>10 There are a number of cottages listed within the Draft Community Based Heritage Study.</p>
<p>11 As there is no proposed destination for this house removal, it could be lost to South West Rocks forever.</p>	<p>11 See Planning Comment "Signposting".</p>
<p>12 If Council approves this application, it would be using the Heritage Study in a way contrary to its intended purpose, i.e. to eliminate rather than protect heritage for future generations.</p>	<p>12 See "Heritage"</p> <p>See Planning Comment 2</p> <p>See Planning Comment 8</p>
<p>13 Authentic old cottages distinguish South West Rocks from other centre.</p>	<p>13 See "Heritage"</p> <p>There are similar cottages within South West Rocks situated within a residential setting that are able to be appropriately protected and retained.</p>
<p>14 The architectural heritage of Range's Retreat cottage is the main reason why the building should be retained on site.</p>	<p>14 See "Heritage"</p>
<p>15 If it were open to public viewing as a heritage building it would be a popular attraction.</p>	<p>15 The cost of retaining the cottage for the benefit of the general public as a tourist attraction is a matter for the owner to consider.</p>

<p>16 Believe the process of deciding what will be listed should be finalised prior to any approval for the site.</p>	<p>16 See "Heritage" See Planning Comment 2 See Planning Comment 8</p>
<p>17 Ranges Retreat together with the two other houses opposite form an important part of the streetscape. This is a very tiny CBD and runs the risk of being destroyed by over development.</p>	<p>17 DCP 34 and the Zone objectives encourage the consolidation of CBD functions within this precinct.</p>
<p>18 Alterations and additions which are sympathetic and compatible with the heritage status of this building would still be possible and would allow the owner or future owners to make commercial use of the structure for the benefit of all who live in and visit the area.</p>	<p>18 See "Heritage: See Planning Comments 3, 8 and 15</p>
<p>19 Council is required to have regard for the Burra Charter when assessing the application.</p>	<p>19 While the Burra Charter sets a standard for assessing the heritage significance of an object, it is not a head of consideration as outlined within the Environmental Planning & Assessment Act 1979.</p> <p>The Burra Charter describes a process for determining the cultural significance and appropriate means of conservation. It is for Council to determine the cultural significance of the building.</p>

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 requirements 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.

The proposal is consistent with currently statutory controls applying to the subject lot.

RECOMMENDATION:

A. That the application be approved subject to the following conditions:-

- 1. The development referred to in the 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 to relocate the building 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 of 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. 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.
10. 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 objectors be advised of Councils decision.

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R B Pitt
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES