

DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

13 June 2006

DSDS3	REQUEST FOR CONSENT TO CARRY OUT A SECTION 138 ROADS ACT CONSTRUCT A DRIVEWAY FILE: RA-42 AJC
--------------	--

SUMMARY:

Reporting to Council on objections to a proposal to construct a driveway access at South West Rocks.



Applicant: Mr M Davis
Subject Property: Lots 6 DP 23517, 329 Gregory Street,
South West Rocks
Zone: 2(a) (Residential A Zone)

Proposal

The applicant has lodged a request for consent to carry out a Section 138 Roads Act Activity in Herbert Appleby Circuit. This proposal requires the construction of a concrete driveway to Council's Urban Standard from the existing kerb to the property boundary in Herbert Appleby Circuit.

A copy of a plan showing the location of the proposed driveway is attached to this report as [\(Appendix E\)](#)

Statutory Requirements

Herbert Appleby Circuit is a dedicated public road which is maintained by Council. The road authority in this instance is Kempsey Shire Council.

Section 138 of the Roads Act 1993 requires a person to obtain consent prior to carrying out work in or over a public road.

A consent under this section of the Act may be granted on application of any person and may be granted subject to conditions as specified by the road authority.

Adjoining Owners Notification

Adjoining owners were notified of the proposal and given until 24 May 2006 to lodge submissions. All the local residents who were notified have lodged objections to the proposal which may be summarised as follows: -

Copies have not been reproduced as one submission has been marked "Confidential" with the other two (2) referring to private matters that do not relate to the merits of the application.

Objection	Planning Comment
1 The proposed vehicle access is on the side of the property not the back.	1 The proposed access is at the rear boundary at the northern end and has a total frontage available to Herbert Appleby circuit of approximately 5m.
2 It goes over two private properties before it goes over council land.	2 The proposed concrete driveway will be fully contained within the footway (nature strip) of Herbert Appleby Circuit and will not cross private property.
3 It has caused conflict between neighbours.	3 The applicant and the objectors have noted there has been disagreement between the affected parties about the applicant using the Herbert Appleby Circuit access point. There has been an attempt by one resident to mediate through the community justice centre.
4 This part of Herbert Appleby Circuit is "one way" and the applicant has been towing in 20 feet boats and caravans and coming up the Council road the wrong way. Visitors with 4 wheel drives and fishing boats also use this access.	4 This is a traffic infringement issue and may occur irrespective of this proposal.
5 Severely affected by applicant crossing Councils nature strip which is incorporated in the adjoining property's front	5 There is ample width available to allow for construction of a concrete driveway at this location.

yard.	
6 The crossing is more dangerous as block is located on a corner.	6 Available sight distance to the road is ample for the design speed. The fact that it will be located in a corner does not make it more dangerous. Will comply with AS/NZ 2890.1 Section 2.6 Domestic Driveways and Council's DCP 36 Urban driveway construction.
7 The neighbour believes that their young children are at risk in their own front yard.	7 There are no front fences erected along the neighbour's frontage. The neighbours concern could be alleviated if they built a fence on their front boundary.
8 Affected residents believe that the existing access has decreased the value of the family homes in the immediate vicinity and has destroyed the front view and a concrete driveway would decrease it further. Driving across the front lawn turn prospective buyers away.	8 The applicant has a right to provide access to his property.
9 Residents are concerned for the safety of their children.	9 Comment highlights need for approach as per point 7 above.
10 The applicant has adequate vehicle access off Gregory Street his main entry being a double width concrete driveway.	10 Council has inspected this site over time and found that as the grass cover had not been tracked or worn, access to the applicant's property via Herbert Appleby circuit had been intermittent to date. The Roads Act 1993 does not prohibit multiple access points when the property in question has multiple frontage to existing public roads
11 The existing Colour bond fence obscures the view of	11 Provision of a suitable type of fencing to improve further

- | | |
|---|--|
| <p>vehicles leaving the applicants property.</p> | <p>sight distance for a driver reversing from the site is recommended.</p> |
| <p>12 The existing gateway is located 5 metres from a local residents bedroom which adversely impacts on that resident especially when vehicles enter and leave as early as 4.30am and late at 10pm.</p> | <p>12 Most urban driveways are located in close proximity to neighbours and this neighbourhood is no exception.</p> |
| <p>13 Will adversely impact upon existing roof water pipes located in the footway area.</p> | <p>13 It will be the responsibility of the applicant to relocate or protect the existing roof water drainage pipes.</p> |
| <p>14 The applicant has not contributed any funds to the upgrading of Herbert Appleby Circuit to date.</p> | <p>14 If and when the applicant subdivides his property only then will he be required to contribute to the upgrading of Herbert Appleby Circuit in accordance with Council policy.</p> |
| <p>15 There is potential for traffic conflict with the adjoining neighbour to the north who will be building a new dwelling on the recently subdivided land in the near future. Both access points will be directly adjacent.</p> | <p>15 As long as sight distance to each property is maintained and not obscured by inappropriate fencing conflict will be no greater than is usual in an urban environment.</p> |
| <p>16 A pedestrian footpath will be installed as part of a recent subdivision of adjoining property to the north. Concerns are raised that there will be conflict between pedestrians and vehicles.</p> | <p>16 In an urban environment there are numerous driveways that intersect concrete footpaths at regular intervals. Providing fencing is modified to suit the conditions of the case then this concern could be overcome.</p> |

REPORT IMPLICATIONS:

- ***Environmental***

The proposal will not generate any adverse environmental impacts.

- *Social*

There are no broad social impacts from this proposal.

- *Economic (Financial)*

There will be no financial implications for Council arising from this proposal, as all costs associated with this proposal will be met by the applicant.

- *Director's Review*

Access to the rear of the applicants land has been the subject of an ongoing dispute between neighbours.

The lack of wear to the existing grassed crossing, suggest that its use is restricted.

Council's has previously approved a shed on the land with access from Herbert Appleby and there is no justifiable reason to deny the application.

Although such applications are routinely approved by Council without notification in accordance with Council Policies the applicant was notified due to the ongoing dispute. It is hoped that formalisation of the access will assist in settling the dispute.

RECOMMENDATION:

- A. That Council grant consent subject to the following conditions:-
 1. The applicant is to replace the existing fencing with a fence that will improve sight distance for a driver exiting the site. Details are to be lodged with Council for approval prior to commencing work.
 2. The details contained in the Agreement attached to the Request for Consent to Carry Out a Section 138 Roads Act Activity are to be complied with in full.

- B. That the objectors be advised of Council's decision.

.....
R B Pitt
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES