



KEMPSEY  
Shire Council

## DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

14<sup>th</sup> March 2006

**DSDS4            2 STOREY DWELLING  
                      22B MARLIN CIRCUIT, HAT HEAD  
                      FILE: T6-05-194 TJN**

### SUMMARY:

Reporting that Council has received an application to erect a dwelling which is considered contrary to the provisions of DCP 37 and DCP 22



**Applicant:**                    L Miles  
**Subject Property:**        Lot 3 DP 270421, 22B Marlin Circuit, Hat Head  
**Zone:**                            2(v) (Village or Township)

### Description of Proposal

The applicant proposes to erect a split level house containing 2 bedrooms on an existing community title allotment ([Appendix D](#)).

### History

At its meeting of February 12<sup>th</sup> 2002, Council considered an application for the construction of 4 dwellings and a community title subdivision. At the time, no reticulated sewerage system existed and the lot has minimal capacity to dispose of effluent on site. After deliberation and further negotiation with the applicant, a three (3) lot community title subdivision was approved on the basis that 1 ET effluent could be disposed of on site (i.e. equivalent to a three (3) bedroom dwelling). The subdivision is comprised of the following: -

- Lot 1 – Community lot for access and effluent disposal.

- Lot 2 – 1990m<sup>2</sup> available for the construction of a single 2 bedroom dwelling.
- Lot 3 – 6735m<sup>2</sup> available for the construction of single 1 bedroom dwelling.

To ensure that development was limited to the above, the following conditions were placed on the consent (issued April 26<sup>th</sup> 2002): -

*20. The required Community Management Statement shall include a provision restricting development on Lot 2 to a single dwelling of not more than two (2) bedrooms inclusive of any room capable of being used or readily adapted for use as a bedroom, unless the dwelling has been connected to a reticulated sewerage system.*

*21. The required Community Management Statement shall include a provision restricting development on Lot 3 to a single dwelling of not more than one (1) bedroom inclusive of any rooms capable of being used or readily adapted for use as a bedroom, unless the dwelling has been connected to a reticulated sewerage system.*

These conditions were noted on the subdivision and Community Management Statement which was finalised on 25<sup>th</sup> August 2004.

To date neither of the approved dwellings have been constructed, however, the consent for the subdivision has been activated by construction of a driveway.

The applicant has lodged an application to erect a two (2) bedroom dwelling on lot 3 on the basis that the site is connected to sewer and the one (1) bedroom restriction no longer applies.

## **Applicants Submission**

The applicant has made a submission outlining the reasons why Council should approve the application in its current form [\(Appendix E\)](#). The main points are as follows: -

1. All lots within the subject community title subdivision have been connected to this system.
2. Condition 20 clearly envisages a dwelling with more than 1 bedroom being permitted on the subject lot once a connection to the sewerage system is provided.

## **Heads of Consideration**

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

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

The proposal is defined as a "dwelling" and is permissible in the zone with development consent.

The proposal is not contrary to the North Coast Regional Environmental Plan 1988.

### **State Environmental Planning Policy 71**

This SEPP applied at the time the application was made. Referral to the then Department of Infrastructure Planning and Natural Resources was required as the site was considered a sensitive coastal location (within 100m of a National Park). Council received a response on 14<sup>th</sup> July 2005 stating that the Director General does not need to be involved in consideration of the matter and that Council would be able to determine the proposal having regard to the matters contained within Clause 8 [\(Appendix F\)](#) of the Policy. A checklist of compliance with Clause 8 is attached: -

- a) The proposal is not considered contrary to the aims and objectives as set out by clause 2 of the SEPP.
- b) The proposal is situated a substantial distance from any coastal foreshore and will not interfere with any public access to the foreshore.
- c) As the site is located a substantial distance from the foreshore there is no requirement to enhance any existing public access.
- d) The proposed dwelling is considered a suitable size (other than height – see DCP 22 below) having regard to the surrounding dwellings and the constraints inherent within the site.
- e) The site is not located adjacent to any coastal foreshore and therefore will not overshadow any foreshore reserve.
- f) The surrounding area is dominated by 1ha rural residential allotments which have retained a high level of vegetation. The

proposed dwelling will result in minimal vegetation clearing. Provided the height of the building is reduced, it will not detract from the scenic qualities of the New South Wales coastline. Additionally the proposed dwelling will not be visible from any beaches.

- g) The trees that are to be removed are able to be removed under an approval that remains current for the lot. As such no further impact upon flora and fauna will occur above that already approved.
- h) The dwelling will be connected to a reticulated sewerage system. This will minimise the potential impacts on marine ecosystems.
- i) See (g)
- 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 not result from this development.
- l) When originally subdivided the site was found to have little value as a site of cultural significance for Aboriginal people.
- m) No on site waste water management is proposed. This will minimize impacts on the water quality of coastal water bodies.
- n) When originally subdivided the site was found to have little value as a site of European cultural significance.
- o) Not applicable as no rezoning is proposed.
- p) The proposal complies with Council's Energy Smart Homes DCP and will be connected to a reticulated sewerage system. No adverse environmental impacts are likely to arise from this development, nor is it likely to contribute to any negative cumulative impacts within Hat Head.

The proposal is subject to the provisions of DCP 37 – Hat Head, and DCP 22 – Local Housing Strategy.

## **Development Control Plan 37**

As Council may be aware, Development Control Plan 37 – Hat Head currently provides for restrictions on development levels within Hat Head based on the construction and subsequent review of a

reticulated sewerage system. The application for the community title subdivision and original dwellings was made before this plan commenced (April 15<sup>th</sup> 2003), meaning that it was not previously subject to the provisions of the DCP.

However, the amended application is required to comply with DCP 37. Section 3.1 of DCP 37 restricts development to the following: -

*"During Phase One, any standard development consents issued by Council shall be restricted to single new dwellings per existing allotments, extensions to existing dwellings and shops. Other developments will be considered provided it can be demonstrated that no net increase in demand for sewerage and water services would occur".*

There are a number of extenuating circumstances in this instance which mitigate in favour of Council varying the provisions of DCP 37.

1. A number of civil works had to be undertaken prior to Council releasing the subdivision linen plan which included construction of driveways. These works were commenced prior to April 2003 meaning that the consent had been acted upon prior to DCP 37 coming into effect.
2. Conditions 20 and 21 of the original development consent were put in place prior to Council having knowledge of the development restrictions that would arise out of the newly installed sewerage system and DCP 37. As both development lots within the community title subdivision are connected to sewer, the owners have an expectation that Council will enforce these conditions and allow them to erect the equivalent of 1 ET on each lot regardless of the provisions of DCP 37.
3. This is the only subdivision of its type in Hat Head, and by allowing a dwelling of 3 or more bedrooms on each lot; Council will not be significantly increasing the loadings on the existing sewer and water systems. As DCP 37 seeks to prevent further subdivision of the land to the south of Korogora Creek until sufficient capacity in the system has been demonstrated, this particular application will not set any undesirable precedent with regards to varying the provisions of DCP 37.

It is recommended that Council indicate that it is prepared to vary the provisions of DCP 37 in this regard subject to compliance with DCP 22 – Local Housing Strategy in respect to height.

## Development Control Plan 22

The proposal complies with all aspects of DCP 22, with the exception of the height of the structure, and the provision of a covered parking space.

### Height

The height of dwellings are governed by Clause 24 of Kempsey Local Environmental Plan 1987 and Section 4.6 of DCP 22 which requires that the top most ceiling level be restricted to 6.2m with an additional rise of 1.7m being allowed for dwellings with raked ceilings unless the applicant is able to demonstrate that compliance is impractical due to the topography of the site.

The highest point of the top wall plate is 7.7metres high, with the highest part of the ceiling rake 8.6metres high [\(Appendix G\)](#). The proposed dwelling is substantially non compliant and Council has not previously agreed to a variation of such magnitude.

### Applicants Submission

The applicant has made a submission [\(Appendix H\)](#) requesting that Council consider a variation to the heights. This was based on the following: -

- The steep fall from west to east is a very localised piece of topography which falls down to a gully before rising back up to a similar level.
- If the topography were averaged out over 30m the numerical building height would be reduced.

### Planning Comment

In order for Council to consider a variation to the DCP it must be satisfied of the following: -

- a) That the proposal meets the performance objectives as outlined within section 3 of DCP 22.
- b) The topography of the site makes compliance with the height limit impractical.

- c) An undesirable precedent will not be set.

The height is most evident from the north elevation, where the building appears as a three storey dwelling when viewed from Marlin Circuit.

While it is agreed that the topography of the site has some features that may make compliance difficult, it is considered that adequate design alternatives have not been explored for Council to be satisfied that compliance is impractical. By stepping the building, or by removing the top floor and making the middle level larger, compliance could be readily achieved.

## **Carparking**

Section 4.3 of DCP 22 requires that a minimum of 1 covered car park be provided. None is shown for in the plan. Although zoned residential, the lot is a large rural residential allotment and no unacceptable loss of amenity would result.

## **Advertising**

The application was advertised in accordance with Council's policy with one (1) objection being received: - [\(Appendix D\)](#)

<b>Objection</b>	<b>Planning Comment</b>
1 The driveway as currently constructed is suitable for both lot 2 and 3. The extended driveway approved as part of application T6-01-169 would now be unnecessary and only invites negatively impacting outcomes on the slope of Connors Hill	1 Council is not able to change or revoke the previous application as it has already been acted upon and remains current. The applicant / owner may construct the already approved driveway should they wish.
2 Does the application meet the requirements for a one (1) bedroom dwelling only being built?	2 The applicant has requested that this provision be varied. A number of extenuating circumstances exist that enable Council to consider the application for a two (2) bedroom dwelling.

3 If the building rules as set down for this lot are not enforced then this application becomes a precedent for all owners in Marlin Circuit who may wish to subdivide.

3 This is the only community title subdivision within the immediate area. It was approved prior to DCP 37 coming into force and as such was not subject to the current development restrictions.

No subdivision is being proposed and as such no precedent is being set.

See "DCP 37"

## **REPORT IMPLICATIONS:**

- ***Environmental***

*Any environmental impacts associated with a dwelling were addressed in previous applications.*

*The proposed dwelling is to be connected to sewerage, this will minimise any potential impacts associated with on site waste water disposal.*

- ***Social***

*There will be no adverse social impacts as a result of this proposal.*

- ***Economic (Financial)***

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

- ***Policy or Statutory***

*The proposal is contrary to the provisions of DCP's 37 and 22. It is recommended that Council vary the provisions of DCP 37 subject to the proposal complying with all aspects of DCP 22.*

## **RECOMMENDATION:**

**A. That the applicant be advised that Council is prepared to vary the provisions of DCP 37 to allow for the construction of a dwelling-house containing 2 bedrooms subject to**

receipt of amended plans being received showing full compliance with the provisions of DCP 22 in respect to height.

**B. That unless satisfactory amended plans are received within 28 days, the application will be refused for the following reasons:-**

- a) The proposal is contrary to Development Control Plan 22 – Local Housing Strategy in regard to building height.
- b) The proposal is likely to create an undesirable precedent for similar variations within the locality and throughout the shire.

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**R B Pitt**  
**DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES**