

DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

14th November 2006

DSDS9	PROPOSED MODIFICATION TO A DEVELOPMENT CONSENT LOT 1 DP337328 NO. 50 LACHLAN ST SOUTH KEMPSEY FILE: T6-06-175 GAN
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SUMMARY:

Council is in receipt of an application to modify Development Consent T6-06-175 for Southside Cellars to remove 11 conditions of consent that primarily relate to the installation of a sealed right of way that would provide one way forward movement for delivery vehicles servicing the rear storage building.

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Applicant: L M Ducat (Barrohire Pty Ltd)
Subject Property: Lot 1 DP 337328 Lachlan St South Kempsey
Zone: 3(a)

Background

Up until recently a former residence on the site has been used as storage for the commercial development fronting the Pacific Highway (Southside Cellars). This former residence was demolished and the property owner commenced construction of a new storage area without development consent. A concrete slab and associated footings have been constructed on the site. Council placed an order on the property owners to cease all construction works.

A development application was submitted as a response to the order for the storage shed. This application was approved on 18th September 2006 subject to conditions [\(Appendix Q\)](#). The approved application was for the construction of a storage area at the rear of the existing commercial premises covering the same foot print as the demolished former residence.

The applicant has submitted an application to modify this consent via the deletion of eleven (11) conditions.

Traffic

The original plans submitted with the development application were requested to be modified to clearly identify a 'right of carriageway' from Nicholson St to Tighes Lane, allowing access in a forward manner to the site over Lot 1 DP767900.

Council requested these modifications, based on previous comments from the Local Traffic Committee regarding Development Application T6-05-212 (a similar proposal for the same site). The Traffic Committee Comments stated the following [\(Appendix R\)](#)

1. That the proposal be referred back to the proponent to ensure the service delivery access only off Nicholson St and exit only via Tighes Lane.
2. All vehicular manoeuvring must be contained on site and not encroach on Tighes Lane.

The approved plans prepared by the applicant and the consent conditions recently issued by Council enforced the requirements of the Traffic Committee in that service access and egress over the site was to occur in a forward manner from Nicholson St to Tighes Lane [\(Appendix S\)](#)

In regards to item 2 above, the service vehicles associated with the approved development encroach on Tighes Lane when positioned to unload stock, however no manoeuvring is required within Tighes Lane.

The applicant has requested modifications be made to the consent conditions. The proposed modifications are substantially reliant upon an alternative traffic route for the proposed servicing of the site. These modifications are discussed further in the following section of this report.

Applicants Submission

The applicant has submitted an application under Section 96 of the *Environmental Planning and Assessment Act 1979*, to modify/delete eleven (11) consent conditions related to the proposed development.

To support the proposed amendments the applicant has submitted the following information:

1. Comments on application Rescon Design (dated 18 Oct 2006) [\(Appendix S\)](#)
2. Plans Rescon Design (submitted via Email dated 30 Oct 2006) [\(Appendix T\)](#) and

3. Letter & S96 Application (L.M Ducat dated 31 Oct 2006) [\(Appendix U\)](#)

Traffic Committee

The comments submitted by Rescon Design (referred to in item 1 above) indicated service vehicles are proposed to access the site which results in the reversing of vehicles up Tighes Lane. This proposed arrangement was recently (24 Oct 2006) referred to the Local Traffic Committee (LTC) for comment. The LTC recommended the following:

That entry and egress of all vehicles from the premises be in a forward motion.

The plans submitted on the 30 Oct 2006 (item 2 above) indicate directional arrows for vehicular movements in a forward direction from the north (Nicholson St). From these plans it appears that vehicle movements originate from the Nicholson St direction and exit through Tighes Lane in a forward manner similar to the already approved plans minus the easement over Lot 1. There is no indication of any reversing within these plans.

Recent discussions with the owner (L.M Ducat) to clarify the proposed arrangements indicated that it is the proponents preferred option for service vehicles to enter Tighes Lane in a forward manner from the Pacific Highway (Lachlan St) and manoeuvre by reversing into the site from the Tighes Lane. This proposed manoeuvre represents the basis of this application to modify the consent, however none of the plans provided to Council demonstrate that this manoeuvre can be achieved.

Council has developed turning paths which demonstrate this manoeuvre can not be achieved on site. [\(Appendix V\)](#) The plans prepared by Council demonstrate there is not enough room to manoeuvre this vehicle in the laneway.

Section 96 modification

The Section 96 application requests that the following conditions be deleted.

Precise of Condition request to be Removed	Applicants Reason for Removal	Planning Comment
Condition 6 Building Code of Australia Assessment Report	no reason	Pursuant with Section 94 of the <i>Environmental Planning and Assessment Regulation 2000</i> Council may require an existing building be upgraded to conform with the Building Code of Australia. In this

		instance sustainable development services considered the upgrading of the building is an appropriate measure.
Condition 10 Delivery vehicles enter via Nicholson Street and exist via Tighes Lane	no reason	<p>This condition is aimed at providing service vehicles an opportunity to access the site in a safe and efficient manner without conflicting with traffic accessing the adjoining service station. The condition is based on recommendations of the Traffic Committee and plans provided by the applicant. If removed, this condition would need to be replaced with another condition which provides an alternative plan for the service vehicle access to the site.</p> <p>The service route proposed in this modification is to enter Tighes Lane in a forward manner from the Pacific Highway (Lachlan St) and manoeuvre by reversing into the site from the Tighes Lane. This proposal is not supported by recent and former LTC recommendations which indicated:</p> <p><i>That entry and egress of all vehicles from the premises be in a forward motion. 24 Oct 2006</i></p> <p><i>That the proposal be referred back to the proponent to ensure the service delivery access only off Nicholson St and exit only via Tighes Lane. 1 June 2006</i></p> <p><i>All vehicular manoeuvring must be contained on site and not encroach on Tighes Lane. 1 June 2006</i></p> <p>It should also be noted that the previous access arrangements for access involved particular facts in the laneway whereby it is now proposed to perform a turning movement onto the site.</p> <p>The applicant has not provided any plans to indicate that the new proposed manoeuvres can be achieved on site.</p>
Condition 12 Erosion Requirements	no reason	<p>This is a standard condition placed on approvals to ensure that new development is undertaken in accordance with the <i>Protection of the Environment Operations Act</i> and the potential for pollution to occur is minimised and should be retained.</p>

Condition 13 Site Investigation Report	Future development may never eventuate.	<p>Given its former use a petrol station the site is regarded as a potentially contaminated site. Council requested the applicant provide a preliminary site investigation into contamination on the site prior to the approval being granted. The applicant provided a limited site investigation, from this investigation it was determined that the proposed storage area could be approved without adverse impacts on the local community or environment.</p> <p>However, it is considered that any future re-development involving the front section of the site would be subject to a detailed site investigation and likely remediation and validation. On this basis, no objection is raised to deletion of condition 13.</p>
Condition 14 a, b, c, e Standard of Construction on Road Reserve	No reason	This condition is in accordance with DCP 36 Engineering Guidelines for Subdivision and Development. Some of the sub clauses are specific to the approved service vehicle route. Should Council approve an alternate traffic route then Council's Development Engineer will need to re-assess these conditions. The condition only requires upgrading of the pavement of Tighes Lane and Nicholson Street where turning movements are proposed.
Condition 16 Water Management Act Relocation of Hydrant	This has no relation to the current development.	Should an alternate traffic route be approved then it would be appropriate to delete this condition, however if the approved access off Nicholson Street is retained the condition should stand.
Condition 17 Details of Stormwater Drainage System	There will be no increased stormwater on the site.	This is a standard condition which requires the applicant to indicate how stormwater is to be accommodated on site with the new development and should be retained.
Condition 18 Provision of Right of Carriageway	This easement is not required with their preferred access option	Should the amended traffic route be approved then it would be appropriate to delete this condition. If the approved access is retained the option could be provided to either provide the RIGHT OF WAY or consolidate the lots.
Condition 19 Register the Right of Carriageway	This easement is not required with their preferred	See Condition 18 above.

on Tittle	access option	
Condition 20 Internal parking & access to comply with DCP 36	Parking does not relate to this development.	This is a standard condition developed in accordance with DCP 36 Engineering Guidelines for Subdivision and Development and the relevant Australian Standards. This condition does not only relate to car parking, but also turning areas access ways, driveways ramps etc.
Condition 21 Provision of Interception a drain	This condition is not required for the preferred access option.	Should the amended traffic route be approved then it would be appropriate to amend this condition. However, if the approved access is retained, the condition should stand.

Report Implications:

- ***Environmental***

In relation to the preferred service arrangements, the proposed modification will permit vehicular movements which create a potentially unsafe environment for pedestrians.

Standard conditions have been developed by Council to ensure development proceeds in the Kempsey Shire in a safe efficient and sustainable manner. Removal of standard conditions may result in adverse environmental, social and economic impacts.

- ***Social***

Some of the proposed amendments create potentially unsafe vehicle movements.

- ***Economic (Financial)***

In regards to the development of easements, the construction of driveways and laybacks, re-paving of roads, and the upgrading of the Building to BCA standards the current approved conditions will be at cost to the proponent. Should the conditions be removed as proposed by the applicant, they will result in cost savings for the development.

If the conditions are amended as proposed, then additional costs and resources would be required by Council to maintain Tighes Lane due to delivery vehicles manoeuvring on the Lane to enter the site.

Any Council approved potentially unsafe vehicle manoeuvring on the public lane may result in future Council litigation should pedestrians be injured and property damaged incurred.

- *Policy or Statutory*

The proposal to remove conditions from the consent would result in non-compliance with DCP 36 Engineering Guidelines for Subdivision and Development, various Australian Standards, Council's Carparking Code and the Local Traffic Committees recommendations.

- *General Managers or Directors Review*

Council should be aware that Council is unable to provide partial approval in a form that is substantially different to that which is applied for. On the basis that Council agrees to deletion of condition 13 whilst retaining the others, it will be necessary to seek the prior written agreement of the applicant. If the applicant is not prepared to provide his agreement, the application should be refused.

RECOMMENDATION:

- A. That the applicant be advised that Council is prepared to agree to modify the consent by deletion of Condition 13 only.
- B. That the applicant be requested to provide his written agreement within fourteen (14) days of notice being given.
- C. That in the event an agreement is not provided as requested, that consent be refused for the following reasons:-
 - 1) The proposed modification would result in the manoeuvring of heavy rigid service vehicles with a minimum to two (2) reversing movements in Tighes Lane that is in contravention with the requirements of Council's Traffic Committee and AS 2890.2 through DCP 36 Engineering Guidelines of Subdivision and Development, thereby likely to adversely affect the existing pavement.
 - 2) The proposed modification does not comply with Council's Parking Code – Policy Number C23:12 in that entry and exit of the development site is not achievable in a forward direction, and the requirement for multiple reversing movements of service vehicles would increase the risk of conflict between the service vehicle and Tighes Lane.

- 3) **The applicant has failed to demonstrate that the safety and efficiency of the Tighes Lane and the Pacific Highway will not be adversely effected by the proposed modification to the development.**

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**R B Pitt
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES**