



## DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

11<sup>th</sup> September 2007

<b>DSDS2</b>	<b>APPLICATION FOR CHANGE OF USE TO CONVERT EXISTING DWELLING INTO TEA ROOM / CAFÉ AND DISPLAY MEMORABILIA, CNR 75 MACLEAY AND NORTH STREETS, FREDERICKTON</b>	
	<b>FILE: T6-07-251 PRJ</b>	<b>{Folio No. *}</b>

### SUMMARY:

Reporting that Council has received an application for a change of use to convert an existing dwelling into tea room / café and display memorabilia and car park for which objections have been received.

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**Applicant:** N & T Turnbull  
**Subject Property:** Lot 82 Sec 7 DP620411, cnr 75 Macleay and North Streets, Frederickton  
**Zone:** 2(V) Village or Township Zone

### Description:

The applicants have proposed to convert a dwelling at the corner of 75 Macleay and North Streets, Frederickton to a tea room / café.

The applicants have indicated that the change of use will provide food preparation facilities and undercover seating for customers and will also be used to display local memorabilia. Parking is proposed at the rear of the building off North Street. [\(Appendix B – Page G6\)](#)

### Heads of Consideration

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

### Kempsey Local Environmental Plan 1987 (KLEP)

The subject site is zoned 2(V) Village or Township Zone, under the Kempsey Local Environmental Plan 1987. The proposal maybe defined as refreshment rooms and is permissible with the consent of Council and is consistent with

the provisions of both the North Coast Regional Environmental Plan and the Model Provisions 1980.

## Development Control Plan No. 8 - Frederickton

Development Control Plan 8 was prepared to identify an existing commercial area within the village of Frederickton. The subject application site is located approximately 600m west of the DCP 8 Commercial Precinct. The proposal is supported for the following reasons:

- (i) The subject site is located on a corner block with in an existing residential building that will be retained, thus retaining the residential character of the area;
- (ii) Amenity impacts on adjoining residential premises are minimised by an existing commercial premises to the west [Freddo Pie shop], North Street road reserve to the east and proposed vegetation screens to the dwelling at the rear of the site. There are no dwellings immediately in front of the site on the south side of Macleay Street.
- (iii) By providing a formal screened parking area on-site at the rear of the premises, there should be a reduction in traffic conflict in Macleay Street.

## Heritage Advisors Comments

The proposal is considered to be a reasonable. The proposed alterations should be sensitive to and compatible with the Edwardian architectural style of the building. The character of the Freddo Pies shop should not be applied to the café, nor should signage be applied to the café.

## **Public Exhibition**

The proposal was advertised in accordance with Council's Public Notification Policy, with two (2) objections having been received with the issues summarised as follows: [\(Appendix C – Page G9\)](#)

<b>Submission</b>	<b>Planning Comment</b>
1 Not Permissible within the Zoning	1 The proposed development is permissible within the zone.
2 Amenity impacts from proposed parking and delivery movements	2 The applicants have proposed to provide landscaping screens between the proposed parking area and the adjoining residence.  The nearest proposed driveway from the proposal to the adjoining property is approximately 7m south of their boundary. In addition, adjoining residence is set back approximately 13m from the shared boundary with

	the proposal and has no windows/doors opening in the direction of the development with a distance of 20m between carpark.
3 Fear of intruders, vandalism and vagrancy.	3 Any potential impacts would be minimal, given proposed opening hours at 6.00am-7.00pm.
4 Concerned that No 73 Macleay Street will become a pie production site.	4 Application is not for pie production.
5 Loss of residential character in the vicinity	5 The form of the existing dwelling will be retained. Refer DCP 8 Comments and Heritage Advisor.
6 Hours of operation	6 Hours of operation are proposed to be (6.00am – 7.00pm trading) with food preparation commencing at 5.00am daily.

## **REPORT IMPLICATIONS:**

- ***Environmental***

***Nil***

- ***Social***

***Improved social venue providing undercover dining for the local community and travelling public. Reduced traffic conflict on the main road with increased use of North Street.***

- ***Economic (Financial)***

***Additional part time employment of up to 6 staff in the local area.***

- ***Policy or Statutory***

***Nil***

## **RECOMMENDATION:**

### **A. That Consent be granted subject to the following conditions:-**

#### **General**

- 1. The development referred to in this application is to be carried out substantially in accordance with the approved development Plan No 51276.21DA, Sheet 1 of 1, Amendment A, Dated 17/08/07 and as modified by any conditions of this consent.**

2. The building or portion of the building is not to be used or adopted for use as a residential flat building.
3. This consent has been issued on the basis that Council has been appointed as the Principal Certifying Authority and Council has accepted the appointment and will be issuing the construction certificate.
4. This consent does not permit commencement of any works. Works are not to commence until such time as a Construction Certificate has been obtained and the appointment of a Principal Certifying Authority.
5. A Construction Certificate shall not be issued until all relevant conditions of this consent have been complied with.
6. Two days prior to commencing work Form 7 under Environmental Planning and Assessment Act Regulations, Notice of Commencement of Building or Subdivision work and Appointment of Principal Certifying Authority is to be submitted to Council.
7. The tea room / café is not to be occupied prior to the issue of an Occupation / Interim Occupation Certificate by Council.

An application for a certificate is enclosed. It is requested that it be completed and returned to Council prior to requesting an inspection. A minimum of 48 hours notice is necessary when requesting the inspection. Appointments will be made in accordance with the inspection program for that area.

8. A maximum of (30) dining seats are permitted within the tea room / café / verandahs / decks in total at any time.
9. A structural engineer's certificate prepared by a practicing structural engineer shall be provided to Council prior to the release of the Occupation Certificate. The certificate shall certify that all required loads associated with the new use of the original dwelling comply with Part B of the Building Code of Australia.

#### Other Requirements

10. Prior to any civil works commencing onsite, the applicant is to advise Council in writing of the following:
  - Supervision is to be undertaken in accordance with the attached schedule "*Construction Guidelines*" - Section 4.2.3 Part 3.

- The identity and qualification of the nominated contractor and / or sub-contractors to undertake the civil works associated with the subdivision / development.
  - A copy of the nominated contractor and / or sub-contractor's Certificate of Currency for Public Liability Insurance cover shall be forwarded to Council. The public liability cover shall be equal to but not less than \$10 million dollars and indemnify Kempsey Shire Council against loss.
  - Roadbase gravel to be used onsite shall conform to ARRB Report No 41, Section 5. A written report is to be forwarded to Council from a registered Geotechnical Engineer certifying that the roadbase material is suitable for the intended use prior to utilising onsite.
11. Before the commencement of site works, demolition or building, 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 builder's toilets
  - e Installation of signage in prominent, visible position including -
    - "Unauthorised site entry is prohibited"
    - Name and phone number of builder or other responsible person for contact outside working hours.

## Section 68

12. Submission of an application(s) to Council pursuant to Section 68 of the Local Government Act 1993 for the following, prior to the issue of a Construction Certificate:-
- Carrying out sewerage work.
  - Installing, constructing or altering a waste treatment device.

## Prescribed Conditions

13. All excavation and backfilling are to be executed safely and in accordance with appropriate professional standards, and are to be properly guarded and protected to prevent them from being dangerous to life or property.

## **Building Code of Australia**

14. All Building work shall be carried out in accordance with the requirements of the Building Code of Australia (BCA). A Construction Certificate shall not be issued until the Principle Certifying Authority (PCA) is satisfied that the plan and specifications comply with the BCA.
15. BCA Assessment Report Building upgrade – A Building code of Australia Assessment Report shall be submitted with the Construction Certificate. This shall be prepared by an appropriately qualified person and shall provide recommendations regarding what upgrading is proposed to the entire building to bring it into conformity with the Building Code of Australia. The report shall address how it is proposed to protect persons using building, egress from the building and restriction of the spread of fire from the building to other buildings nearby. Further, all recommendations contained within this report shall be incorporate with the scope of works covered by the Construction Certificate.

A Fire Safety Schedules shall be issued by an appropriately qualified person and provided to Council as part of a Construction Certificate in accordance with the Environmental Planning and Assessment Regulation 2000. This schedule shall distinguish between current proposed and required safety measures. The fire Safety Schedules shall identity each Fire Safety measures that is / are Critical Fire Safety Measures and the intervals at which supplementary fire safety statements shall be given to the Council in respect to each measure.

## **Amenity of Neighbourhood**

16. Access to the site for deliveries is to be confined to between 7.00 am and 7.00 pm daily. In this regard, a sign clearly indicating same is to be displayed at the entry to the development. Details, including location of signage, are to be provided with the plans for the required Construction Certificate.
17. A maintenance / management policy shall be prepared and submitted to Council for approval prior to the occupation of the premises. This plan shall address such items including but not limited to lighting, graffiti, CCTV, and other general maintenance requirements as they related to security of the premises.
18. The hours of operation of the activity are to be confined to:

- 6.00 a.m. to 7.00 p.m daily for retail
  - 5.00 a.m. to 7.00 p.m food preparation
19. Building materials are not to be stored within the road reserve or any other public place.
  20. Excavated material from the site is not to be placed within the road reserve or any other public place.

## Access and Parking

21. The applicant is to apply separately pursuant to Section 138 of the Roads Act 1993 for consent to carry out work within the North Street road reserve and submit detailed Engineering Plans(including any supporting documentation) from an appropriately qualified person as follows prior to the issue of the Construction Certificate: -
22. Vehicular access from North Street to the property boundary is to be via a heavy duty layback and full width 150mm thick reinforced concrete paving. All work including any front boundary gate and associated fencing is to be wholly retained within the development property.
23. Separate entrance and exit driveways with a minimum width of 3 metres are to be provided and signposted accordingly.
24. Provision of a physical barrier across the full road frontage of the North Street property suitable to prevent vehicular access at locations other than the approved driveways.
25. Provision of integral 150mm concrete kerb and gutter and extension of the existing flexible pavement with bitumen wearing surface from the end of kerb in North Street for the full street frontage to Council's Urban Standard, specified in Council's Development Control Plan 36 at full cost to the applicant. The applicants Consultant Engineer is to liaise with Shire Services to confirm alignment details prior to commencing design work.
26. Applicant is to submit a Erosion and Sediment Control Plan in accordance with Council's Development control plan 36 and having regard for the Landcom Guide, Soils and Construction, Managing Urban Stormwater,2004.
27. All internal parking areas, access-ways, turning areas, driveways and ramps are to be designed and constructed in accordance with Council's Parking Code, AS2890.1 Off Street car parking and AS 2890.5, Off

Street Commercial vehicle facilities and Engineering Guidelines for Subdivision and Development before occupation of the building or commencement of the proposed land use. All such areas to be concrete paved and / or bitumen sealed.

28. The applicant's Surveying Consultant is to submit a Work as Executed Plan for all Civil Engineering work undertaken within the North Street road reserve prior to issue of the Final Occupation Certificate.

## Stormwater

29. All stormwater drainage from this site is to be piped and directed to Kempsey Shire Council's pipe drainage system located in North Street. The applicant is to submit detailed Engineering Plans (including any supporting documentation) from an appropriately qualified person prior to the issue of the Construction Certificate.
30. Runoff and soil erosion controls shall be installed in accordance with the approved Erosion Control prior to work commencing on the site. The controls shall incorporate:-
  - a diversion of uncontaminated up site runoff around cleared and / or disturbed areas and areas to be cleared and / or disturbed.
  - b sediment control fences at the down slope perimeter of the cleared and / or disturbed area to prevent unwanted sediment and other debris escaping from the land.
  - c maintenance of all erosion control measures at maximum operational capacity until the land is effectively rehabilitated and stabilised beyond the completion of construction.
31. Protection of any kerb inlet pit and or drainage inlet located downstream of the site in accordance with Council's Engineering Guidelines for subdivision and development (drawing No SW20).

## Contributions

32. Submission of an application for a Certificate of Compliance pursuant to Section 305 of the Water Management Act 2000 and the lodgement of a Certificate of Compliance indicating that the requirements of Section 306 of the Water Management Act 2000 have been met, prior to issue of the Construction Certificate.

33. You are advised that a Certificate of Compliance pursuant to Division 5 of the Water Management Act 2000 will be issued by Council, subject to the following matters being complied with:-
- Payment of a Sewerage developer charge in accordance with the Development Servicing Plan adopted by Council at the rate of \$6,451 per equivalent tenement, i.e  $\$6451 \times 0.32 \text{E.T} = \$2,064$  total for 2007 / 2008 (Indexed).
  - Payment of a Water Supply developer charge in accordance with the Development Servicing Plan adopted by Council at the rate of \$7,647 per equivalent tenement, i.e.  $\$7,647 \times 0.32 \text{ E.T} = \$2,447$  total for 2007 / 2008 (Indexed).
34. The existing sewer junction servicing existing lot 82 is to be located such it is readily accessible for maintenance and repair as required. The applicant is to locate the sewer junction on lot 82 relative to the existing property boundary by survey and show it on the plans prepared for the construction certificate demonstrating that the sewer junction is accessible.
35. Where the sewer junction is not accessible detailed engineering plans are to be submitted to Council detailing the method to be used to make the sewer junction accessible.
36. The plans for the proposed exit driveway serving the proposed carpark shall be amended to remove the horizontal curved alignment prior to release of the Construction Certificate.
37. A reciprocal right of way shall be created over the driveway between the proposed parking area entry and exit driveways and the existing staff parking area located on lot 7 DP 1826, prior to release of the occupation certificate.

#### Landscaping

38. Submission of a detailed landscaping plan providing for the establishment of suitable species endemic to the area, including the number and species of plants to be planted and the means of establishing the landscaping beds prior to release of the Construction Certificate.

#### Advices

The applicant / owner should note that the Commonwealth Disability Discrimination Act 1992 provides opportunity for public complaint possibly leading to legal action if access to

premises by people with disabilities or their carers is precluded. This may require action to provide or improve access in addition to the minimum requirements of the Building Code of Australia.

The Human Rights and Equal Opportunity Commission can provide further information on this issue (tel: 088-021-199 toll free).

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

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