

## DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

14<sup>th</sup> December 2004

**DSDS3      DUAL OCCUPANCY  
MAIN STREET, CRESCENT HEAD  
FILE: T6-04-557    DEC**

### SUMMARY:

Reporting that Council has received a Development Application for the demolition of an existing dwelling and the erection of an attached dual occupancy building and Torrens Title subdivision in Main Street, Crescent Head ([Appendix H](#)). The proposal requires a variation to Council's Development Control Plan 22 – Local Housing Strategy. Council has received three (3) objections to the proposal.



**Applicant:** Mr Brian Hardy  
**Subject Property:** Lot 1 DP 102296 40 Main Street, Crescent Head  
**Zone:** 2(a) (RESIDENTIAL "A" ZONE)

### REPORT IMPLICATIONS – STATUTORY AND POLICY

The proposal has been examined having regard for the Heads of Consideration identified under Section 79 C (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 subject land is zoned 2(a) (Residential 'A' Zone) under the Kempsey Local Environment Plan 1987. The proposal is permissible in the zone with the consent of Council.

The objective of the 2(a) zone is to 'provide areas for low density residential development'. Permissible densities are determined by assessment with Council's Development Control Plan 22 – Local Housing Strategy.

Whilst the dwellings have relatively large floor areas, the proposal complies with the density requirements for the 2 x 2-bedroom dwellings

#### **North Coast Regional Environment Plan (NCREP) 1988**

It is considered that the proposal is not contrary to the NCREP 1988.

## **State Environmental Planning Policy 6 – Number of Storeys in a Building**

Pursuant to SEPP 6 the number of storeys in a building shall:

*'be deemed to be the maximum number of storeys, floors or levels, as the case may be, of the building which may be intersected by the same vertical line, not being a line which passes through any wall of the building'.*

From the elevations provided in [\(Appendix D\)](#), it appears that the building is 3-storeys, thus contrary to the KLEP. However, after application of SEPP 6 the building is considered to be 2-storeys as the 'heat stack' only contains a stair case and landing leading to the roof deck door (roof decks are not recognised as storeys), the rest being a void above the 2<sup>nd</sup> floor (it is noted that the plans required do not depict a staircase landing, however, under the BCA one is required. In any case, a landing is not considered to be a storey).

The issue of building height and bulk is discussed further below.

## **State Environmental Planning Policy 71 – Coastal Protection**

The proposal is within the mapped Coastal Zone. Pursuant to SEPP 71 Council is required to consider Clause 8 matters. Relevant matters are outlined below:

It is considered that the proposal is consistent with Clause 8 matters and is unlikely to compromise the aims of SEPP 71. Relevant matters include:

- The proposal will not affect public access to and along the coastal foreshore.
- The site is unlikely to adversely impact on cultural heritage – The site has an existing dwelling on-site and there is no known significant aboriginal sites on the block.
- The proposal is unlikely to adversely affect the visual amenity of the coast – the proposal is on a relatively level block in a built-up area. The proposal is not located in a visually prominent and/or significant position. The proposal is unlikely to result in loss of significant views from any public place.
- The proposal is unlikely to negatively affect the beach environment or
- The proposal does not require the removal of any significant vegetation.
- It is considered that the proposal is not inconsistent with the principles of ecologically sustainable development.
- The proposal is expected to result in some overshadowing. However, it is considered that the impact is unlikely to be unacceptable. The issue of overshadowing is discussed further below.
- The proposal is unlikely to have any adverse impact on threatened species, populations, communities or critical habitat as listed and

defined under the Threatened Species Conservation Act 1995. The proposal is unlikely to adversely affect any wildlife corridors - The site is a conventional house block in an urban area.

- It is considered that the proposal will not result in any significant impacts on the water quality of coastal water bodies.

### **Development Control Plan (DCP) No. 22 – Local Housing Strategy (Urban Areas – 2003)**

The proposal has been assessed in accordance with the provisions of DCP 22:-

<b>STANDARD</b>	<b>REQUIRED</b>	<b>PROPOSED</b>	<b>COMPLIANCE</b>
Density	480m <sup>2</sup>	489m <sup>2</sup>	Yes
Setbacks	Primary = 5m with the consideration of a 1.5 m encroachment for unenclosed structures	Main building is setback 5m. An unenclosed balcony encroaches 1.5m in the front setback	Yes
	Side = min 900mm for 1 <sup>st</sup> storey with min average 1.8m	Min 900mm with min average > 1.8m	Yes
	Side = Min 1.5m for 2 <sup>nd</sup> storey with min average 4.1m	Min 1.5m with min average > 4.1	Yes
	Rear at least 900 mm	> 900 mm	Yes
Car Parking	1 covered resident park per dwelling	1 covered resident park per dwelling	Yes
	1 visitor park to service the development	1 visitor park to service the development	Yes
	Compliance with AS 2890.1		<b>No *</b>
Private Open Space	Min 25m <sup>2</sup> with 4x4m rectangle and primary area with solar access	>25m <sup>2</sup> with 4x4m rectangle and primary areas with solar access	Yes
Landscaping	170m <sup>2</sup>	Approximately 180m <sup>2</sup>	Yes
Height	6.2m with consideration of additional rise of	6.2m with raked ceiling rise of 1.36 for raked ceiling	Yes* However concern is raised with

	1.7m for raked ceiling		compliance with performance objectives
Solar Access	Min 3.5 star NATHERS  Adequate solar orientation  No shading of neighbouring residential buildings or primary open space for more than 2hrs between 9am and 3pm on 22 <sup>nd</sup> June	5 star NATHERS  Design has maximised solar access available  Proposal will result in overshadowing in excess of DCP 22's standard	Yes  Yes  <b>No*</b>
Privacy	Section 4.8 of DCP	Generally considered adequate	Some Concern *
Cut and Fill	Max 1.5m	<1.5m	Yes
Infrastructure		Section 94 Contributions	
Erosion and Sediment Control		To be conditioned.	

\* = see Planning Comment

### Car Parking and Access

The applicant has proposed to provide a shared stack park ([Appendix I](#)) to satisfy the visitor car parking requirements of DCP 22. However, the access driveway to each resident garage on either side of the visitor car park does not comply with AS 2890.1 – Off Street Car Parking having regard for the width between the outermost edge of the visitor park and the decorative fence.

The applicant is unable to widen the driveway and the maximum permissible width at the property boundary under Council's Parking Code is 6m. It is considered that allowing driveway width greater than 6m would create an undesirable precedent and adversely impact on the streetscape. It is also noted that the building cannot be substantially setback further due to the potential for increased overshadowing impacts.

The applicant has submitted the following in support of the visitor parking on-site:

*'I have altered the amended plans for off street parking, within the constraints of a small site, to comply as close as possible to AS 2890.1 taking into consideration the Aims and Objectives of DCP 22 and the wideness of Main Street itself for additional parking. As the central driveway would be paved, it is making use of the unused area for visitor parking and so consequently does not have a large impact on the development and streetscape'.*

Given that the majority of residences in Crescent Head would have a motor vehicle, it is considered that any intensification in dwelling density will lead to increased on-street parking pressures. It is therefore considered important that emphasis be placed on providing practical and accessible off-street car parking to service new developments so as the potential for road user and pedestrian safety is not compromised. Having regard for the potential to lower the building and have it setback further, it is considered that it would not be unreasonable to request that amended plans be submitted providing for compliance with AS2890.1 – Off Street Car Parking.

## **Height**

As discussed in SEPP 6 comments, whilst the building has a 3-storey appearance, it is only technically 2-storeys. After requests to address the height and bulk of the building the applicant has amended the original plans to achieve the current proposed height of 6.2m at bottom of rake to 7.56 at top of rake. The applicant has justified the building's height with a submission (full copy included in [\(Appendix J\)](#) based on the following:

- The height can be attributed to the ventilation heat stack that has been designed to achieve optimum natural solar and thermal efficiency.
- The building complies with the height requirements of DCP 22 i.e. total height is 7.56m compared to the limit of 7.9m.
- The heat stack will enable easy maintenance of solar voltaic cells.

The sustainability principles incorporated in the development should not be overlooked as the design has maximised the use of natural heating. However, it should be noted that the site is relatively level and a 2-storey building could be designed to have a lower height and hence less visual impact on the streetscape. The visual impact the façade (northern elevation) has on the streetscape is similar to that which would be expected by a 3-storey building. Approving the proposal could result in a possible undesirable precedent that would be set for similar future proposals within Crescent Head and the wider Shire.

It should also be noted that once erected, the building could readily be modified to incorporate a mezzanine level, thereby defeating the purpose of the standard.

## **Solar Access**

Due to the relatively small block and the height of the building, the applicant was requested to prepare a shadow-angle diagram addressing Section 4.7 of DCP 22. The shadow angle diagram is included in [\(Appendix K\)](#). Pursuant to Section 4.7.1:

*'All buildings shall be designed to ensure that no part of the windows of any living areas of any adjoining residential buildings or primary open space or landscaped open space, are overshadowed for more than two (2) hours between 9.00a.m. and 3 p.m. on 22 June'.*

As evidenced in the shadow-angle diagram [\(Appendix K\)](#) there are areas identified on neighbouring properties affected by overshadowing for more than 2 hours between 9am and 3pm on 22 June.

Some of the overshadowing is on a portion of both primary and landscaped open space on neighbouring properties. With a reduction in overall height of the building it is considered that the overshadowing impact can be reduced so as no adverse impact results.

However, the technical expertise of the designer to produce such diagrams is not known or the method used to produce the diagrams. In requesting amended plans, details should be required or verification of the plans by a suitably qualified person.

Also, DCP 31 – Energy Smart Homes requires certification of the plans by a NatHers accredited certifier which should also be requested.

## **Privacy**

The primary concern related to privacy is associated with the 15m<sup>2</sup> roof deck above each dwelling. Whilst there will be a balustrade and a rear screen for solar voltaic cells and the primary impact will be to the front of Main Street, it is considered that the potential still exists to overlook the rear yards of neighbouring properties. It is considered that the erection of larger screens and balustrades is not practical, as they would result in potentially adverse impacts on the streetscape.

Whilst deletion of the roof deck would result in a reduction in private open space areas, it is considered that the privacy impact on neighbouring dwellings should be given greater consideration.

Under normal circumstances, the balconies of two (2) storey dwellings are 2.6 to 3.8 metres above ground level with the proposed sun decks 5.5 metres above ground level.

## **Public Exhibition**

The proposal was advertised in accordance with Council's Advertising Policy with three (3) submissions having been received ([Appendix L](#)). The submissions can be summarised as follows: -

Submission	Planning Comment
1. The proposal will overshadow our property, including orchid house and vegetable gardens.	1. Refer to Solar Access comments
2. Privacy will be lost	2. Refer to privacy comments
3. The structure is not in character with the lay out of Crescent Head and will affect the amenity of the area.	3. Whilst the proposal is permissible in the zone, it is considered that the height and bulk of the building is inconsistent with existing and planned streetscape, having regard for the relatively small and level block.  Refer to height comments.
4. Dual occupancies are risky and often result in loud music and drunken parties during holidays.	4. Future anti social behaviour is somewhat speculative and difficult to justify having regard to the proposal.  Any future noise impacts are subject to compliance/enforcement under the protection of Environment (Operations) Act 1997.
5. The owner has not regarded the interests of neighbours.	5. It is considered that the majority of the proposal has been designed having regard for potential impacts on neighbours with some issues of concern highlighted in the Report.  The application should be assessed on its merits.
6. The proposed building is ugly	6. The appearance of the building is considered to represent and utilise modern architectural and natural heating principles. As previously discussed, it is considered that the overall height of the building could be reduced to reflect a conventional 2-storey building on a level block so as it is consistent with the current and planned streetscape.

## ESD IMPLICATIONS

### Environmental Implications

There is expected to be no nuisance or unmanageable emissions of any kind. The proposal is adequately serviced

The proposal does not require the removal of any substantial or significant vegetation and is unlikely to have any significant impact on ecosystems within the Shire.

It is considered that all relevant environmental considerations are addressed within the Planning Report.

## **Social Implications**

It is considered that the proposal positively contributes to the range of housing available in Crescent Head

Concern has been raised in relation to car parking, visual impact and bulkiness on the streetscape, overshadowing and privacy all of which have associated social implications. It is considered that the proposal could be amended so as the impacts are unlikely to be adverse

## **Economic Implications**

The proposal is considered to be of economic benefit to the applicant, current and future owners of the property/dwellings.

The proposal is likely to generate economic activity and work during the construction phase of the development. It is considered that the two dwellings will be of minimal economic long-term benefit to the wider community through the demand for goods and services. It is considered unlikely that there will be any adverse economic impacts as a result of the proposal.

Should Council consider the proposal to be justified and consider the potential impacts as not being adverse, and provided that the applicant has paid additional application fees to cover underestimated project costings, the following conditions could be included in any approval:-

- 1 The development referred to in this 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 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.
- 3 The development referred to in this application is to be carried out substantially in accordance with the approved development plans as modified by any conditions of this consent.

- 4 A Construction Certificate shall not be issued until all relevant conditions of this consent have been complied with.
- 5 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.
- 6 The building is not to be occupied until all conditions of Council's consent have been complied with and an Occupation Certificate has been obtained from Council or an accredited certifier and submitted to Council.
- 7 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.
- 8 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:-
  - a Carrying out water supply work.
  - b Installing, altering, disconnecting or removing a meter connected to a service pipe.
  - c Carrying out sewerage work.
  - d Carrying out stormwater drainage work.
- 9 Approval is subject to the condition that the builder or person who does the residential building work complies with the applicable requirements of Part 6 of the Home building Act 1989 whereby a person must not contract to do any residential building work unless a contract of insurance that complies with this Act is in force in relation to the proposed work. It is the responsibility of the builder or person who is to do the work to satisfy Council that they have complied with the applicable requirements of Part 6.

Details are to be submitted to Council prior to work commencing.

- 10 Before work commences, the Council must be informed in writing of the name and contractor licence number of the licensee who has been contracted to do or intends to do the work
- 11 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.
- 12 A sign is to be provided in a prominent and visible position (on the building or fence) stating "Unauthorised entry to the site is not permitted", together with the name of the person responsible for the site and a contact number outside working hours.
- 13 Details of proposed hoarding to be submitted, in writing, prior to the construction commencing.
- 14 A builder's toilet complying with Clause 78I of the Environmental Planning and Assessment Regulation, and connected directly to the sewer is required on site throughout the entire building operation.  
  
Note: Clause 78 I requires that the toilet must be provided before any work is commenced.
- 15 Compliance with the Building Code of Australia.  
  
All building work must be carried out in accordance with the requirements of the (BCA).  
  
A construction certificate shall not be issued until the Principal Certifying Authority (PCA) is satisfied that the plans and specifications comply with the BCA.
- 16 A Survey Certificate is to be submitted upon completion of the roof framing to ensure that the top plate is at or below 7.56 metres A.H.D. (i.e. top of raked ceiling.)  
  
The survey is to be undertaken by a registered surveyor. All levels are to be based on a fixed datum point in Australian Height Datum (AHD).
- 17 A Survey Report is to be submitted on completion of form work prior to pouring of slab to ensure the location of the building is in accordance with the approval issued.
- 18 The hours of construction are to be confined to 7.00 a.m. to 6.00 p.m., Mondays to Fridays, and 7.00 a.m. to 12 noon, Saturdays.
- 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.
- 21 Construction of a vehicular access from the road formation to the property boundary in accordance with Council's Standard for Access to Rural Properties. Applicant is to consult Mr Tony Castle of Council's Environmental Services Department for requirements before commencing construction.
- 22 Access from the street to the property boundary to be via a standard layback and full width concrete paving. Paving to be 125mm thick unreinforced with construction joints to suit service trenches. Applicant is to consult Council's Environmental Services Department for details prior to commencing work on site.
- 23 Any redundant footpath crossings or access culverts to be removed and reconstructed at the applicant's expense, and footway access restored to the satisfaction of Council, prior to occupation of the premises.
- 24 All internal parking areas, accessways, turning areas, driveways and ramps are to be constructed in accordance with Council's Parking Code 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.
- 25 Roofwaters are to be directed by means of sealed pipes to the street gutter. Details are to be provided with the plans for the required Construction Certificate.
- 26 The means for conveyance of all stormwater from the site to the kerb and gutter via a standard type converter strictly in accordance with Council's Engineering Guidelines for Subdivision and Development.
- 27 Any necessary alterations to or relocations of public utility services to be carried out at no cost to Council.
- 28 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.
- 29 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 upsite runoff around cleared and/or disturbed areas and areas to be cleared and/or disturbed.

- b sediment control fences at the downslope 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.
- 30 Protection of any kerb inlet pit located downstream of the site in accordance with Council's Engineering Guidelines for subdivision and development (drawing No SW20).

Note:

- i Any roof drainage system is to be connected to the required discharged point at the building frame inspection stage.
  - ii Any material spilled or deposited on the road reserve or in the gutter is to be removed immediately.
- 31 The plans for the required Construction Certificate are to include calculations of the amount of cut and the amount of fill.

In the event additional fill material is required, details of the source of material are to be provided.

If an excess of earth will result, details of the means of disposing of all material are to be provided. Depending on the amount of any excess, Council may require lodgement of a cash bond to cover the cost of any damage to Council's road system caused by haulage.

- 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 release of the Subdivision Certificate/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:-
- a Payment of a contribution towards the augmentation of sewerage headworks at the rate of \$2028 per equivalent tenement, i.e \$2028 x .32 E.T = \$649. (Indexed 2004/2005)
  - b Payment of a contribution towards sewerage reticulation works at the rate of \$1495 per equivalent tenement, i.e \$1495 x .32 E.T = \$487. (Indexed 2004/2005)

- c Payment of a contribution towards water supply headworks at the rate of \$1211 per equivalent tenement, i.e  $\$1211 \times .32 \text{ E.T} = \$387$ . (Indexed 2004/2005)
- 34 The applicant is to pay a contribution towards the embellishment of open space and ancillary facilities for each additional dwelling unit after the first unit in accordance with Council's Section 94 Plan for Outdoor Recreation. The contribution is to be paid prior to the release of the Construction Certificate/Subdivision Certificate, at the rate prevailing at that time. The current rate is \$395 per additional dwelling unit, i.e  $\$395 \times .32 \text{ E.T} = \$126$ . (Indexed 2004/2005)
- A copy of Council's Section 94 Plan may be inspected at Council's offices, Corner Elbow and Tozer Streets, West Kempsey.
- 35 Submission of an application for Subdivision Certificate pursuant to Section 4A of the Environmental Planning and Assessment Act 1979 which authorises the registration of the plan of subdivision.
- 36 Applicant is to submit with the final plan of subdivision copies of any instruments under Section 88B or E of the Conveyancing Act 1919 relevant to any restrictive covenants, easements or rights of way created by or affected by this subdivision. Kempsey Shire Council is to be listed as the sole party to modify or remove such instruments.
- 37 Applicant is to provide a right of way on the plan of subdivision to ensure that each dwelling has legal access to the visitor carpark and relevant driveways and turning areas.
- 38 Applicant is to provide easements on the plan of subdivision to accommodate sewerage and water infrastructure for both dwellings.
- 39 A separate sewerage connection and water meter is to be provided for each dwelling. The cost of which is to be met by the applicant.

## RECOMMENDATION

- A That the applicant be invited to submit amended plans to:**
- 1 Achieve compliance with Australian Standard 2890.1 – Off Street Car Parking for all car parks and driveways.**
  - 2 Reduce the height of the building so as to represent a typical 2-storey development that is consistent with the current and planned streetscape in Main Street, Crescent Head.**
  - 3 Provide a shadow-angle diagram with the amended proposal demonstrating that the proposal complies with Section 4.7 of DCP 22.**

- 4 Address concerns raised in relation to the privacy impacts the roof deck may have.
  - 5 Include a certificate prepared by a NatHers accredited certifier.
- B** That unless amended plans are submitted within 30 days of notice being given which adequately address the above matters, that consent be refused for the following reasons:
- 1 The proposal is inconsistent with the General Performance Objectives of DCP 22 in respect to Building Design and Siting, Streetscape and Carparking.
  - 2 The proposal is likely to result in unacceptable impacts on the privacy of adjoining neighbours.
  - 3 The proposal is likely to create an undesirable precedent for similar developments within the locality and the Shire.
- C** That the applicant be further advised that the application will be refused as incomplete unless fees are paid within 30 days based on an estimated cost of construction of not less than \$400,000.
- D** That the objectors be advised of Council's decision.

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