

INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES

URBAN ASSESSMENTS

Action required: for determination: Development Application

File No:	S04/01163/1	[Y04/2773]
Application Number:	DA 125-05-2004	
Date of lodgement:	25 May 2004	
On land comprising:	3 Liston Street, Nambucca Heads Lots 9 & 11 DP 758749	
Application made by:	David Tooby, King & Campbell Pty Ltd PO Box 243, Port Macquarie, NSW 2444	
Application made to:	Minister for Infrastructure and Planning	
Local government area:	Nambucca Shire Council	
State electorate:	Andrew Stoner, OXLEY. The views of the Member are not known.	
Notification:	Advertised in Nambucca Guardian News on 10/06/04 & letter drop carried out.	
Public Exhibition	Start: 11/6/04. End: 9/7/04.	
For the carrying out of:	4 storey residential apartment complex comprising 14 units and basement parking for 25 cars.	
Estimated cost of works:	\$2,400,000	
FTE Jobs created:	16 full time equivalent jobs	
Type of development:	State Significant Development, Integrated Development	
Was a public inquiry held?	An inquiry under s.119 of the Act was not held.	
Integrated approval bodies:	Roads and Traffic Authority (Nambucca Shire Council as delegate)	
Main Issues:	Refer to attached page.	
Compliance with the Act	The application has been considered with regard to the matters raised in section 79C of the Act. The application was notified in accordance with the Regulations and all submissions received in the period have been considered.	

Recommendation

It is recommended that the Minister for Infrastructure and Planning pursuant to section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended) and clause 10 of State Environmental Planning Policy No. 71:

- (A) grant **consent** to the application subject to conditions (Tagged “A”),
- (B) support the SEPP 1 submission objecting to clause 29 of Nambucca Local Environmental Plan 1995 relating to density control; and
- (C) authorise the Department to carry out post-determination notification.

Approved:

Robert Black
Director, Urban Assessments

Craig Knowles
Minister for Infrastructure and Planning
Minister for Natural Resources

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Recommendation

It is recommended that the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) pursuant to section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended) and clause 10 of State Environmental Planning Policy No. 71:

- (A) grant **consent** to the application subject to conditions (Tagged “A”),
- (B) support the SEPP 1 submission objecting to clause 29 of Nambucca Local Environmental Plan 1995 relating to density control; and
- (C) authorise the Department to carry out post-determination notification.

Approved:

Robert Black
Director, Urban Assessments

Diane Beamer
Minister assisting the Minister for Infrastructure
and Planning (Planning Administration)

INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES

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Development Application: Supplementary Information

Proposed Development in detail

The proposed development seeks consent for:

- Construction and strata subdivision of a 4 storey residential apartment complex incorporating 14 apartments, basement car parking for 25 vehicles, a pool and landscaping.

Summary of Significant Issues

The proposed development is of a height and design so as to be compatible with multi-storey development currently existing or under construction nearby in Liston Street. In this regard, the proposed height, boundary setbacks, landscaping and on-site car parking for the development will fully comply with the relevant Nambucca Shire Council planning controls and North Coast REP. A SEPP 1 objection has been submitted for a proposed non-compliance with the minimum site area requirement as per clause 29 of Nambucca LEP 1995. The SEPP 1 is supported as strict compliance with the development standard is considered unnecessary and unreasonable in this instance. The proposed development will also result in acceptable levels of overshadowing of adjoining residential properties throughout the day, at all times of the year.

The subject site is within a residential zone that is identified in Nambucca LEP as being appropriate for a higher density of development, and as a result the area is undergoing a change in character from single storey dwelling houses to multi-unit housing and tourist development. The design and layout of the proposed development will present more sympathetically to the street and adjoining residential properties than those approved and under construction in immediate vicinity of the subject site in terms of relative bulk and scale, encompassing the principles of ESD through cross-ventilation and solar orientation.

There will be minimal overlooking of adjoining properties due to the relative absence of side balconies above ground level and proposed perimeter landscaping. From an inspection carried out of the locality it was concluded that the potential view loss to surrounding residential properties would be minimal.



Planning Assessment Report Development Application

DA125-05-2004

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number DA125-05-2004.

The application seeks consent for construction of a 4 storey residential apartment complex comprising 14 units, basement parking for 25 vehicles, and associated landscaped communal areas, including in-ground pool.

The Minister for Infrastructure and Planning is consent authority under clause 10 of State Environmental Planning Policy No. 71 (SEPP 71), as the proposed building exceeds 13m in height.

It is recommended that the development application be granted **consent**.

2 BACKGROUND

2.1 Site Context

The site comprises 2 lots located at 3 Liston Street, Nambucca in the Nambucca Shire local Government area (refer **Tag "B"** for locality plan). The site has a total area of 1765m² and is situated approximately 750m from the coastline. It is generally rectangular in shape, with a 44.78m frontage to Liston Street and a depth ranging from 36.835m to 47.155m. The site is currently vacant and does not contain any significant vegetation.

Topographically, the site lies on a predominant east-west ridge-line, elevated approx. 4.4m above the formed carriageway of Liston Street. Neighbouring development which dominates the local landscape includes the 'Sungbeam' (7 storeys) apartment complex to the west, 'The Palms' (4 storeys) apartment complex (under construction) to the east and the water tower further to the east (refer **Tag "C"** for locality photos).

The development application was lodged with the Department on 25 May 2004 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

3 THE PROPOSED DEVELOPMENT

The proposed development seeks consent for construction and strata subdivision of a 4 storey residential apartment complex comprising 14 apartments, basement parking for 25 vehicles, a communal pool and associated landscaping on the amalgamated site. Vehicular access to the site will be via a single driveway off Liston Street. Each individual unit will have both a northerly and southerly aspect to take advantage of the northern sun and the southerly views.

The basement parking level will be provided by excavating the site, to a similar level as the street. The front setback area to Liston Street will be terraced with semi private courtyard areas to present a pedestrian friendly edge to the development. This will be in contrast to the blank retaining wall associated with the adjoining Sun gleam apartments.

The building will be of masonry and reinforced concrete construction, finished with a rendered and painted exterior. The finished building will be of a sandstone colour, with top floor walls and mid floor level balcony elements highlighted in a white/cream colour to provide visual variation to the façade. The development will incorporate a juxtaposition of flat and angled roof elements, as well as roof terraces associated with the top floor units.

Refer **Tag "D"** for development plans.

4 STATUTORY FRAMEWORK

State Environmental Planning Policy No 71 – Coastal Protection (SEPP71) applies to the site, and under clause 10 of this policy, the Minister is the consent authority as the site is within the coastal zone and the proposed building will exceed 13m in height. The site is not within a sensitive coastal zone, and a Master Plan will not be required for the site.

The land is zoned 2(b) – Residential (Medium-High Density) under Nambucca Local Environmental Plan (NLEP) 1995. The proposed use is permissible within the 2(b) zone. Nambucca Development Control Plan (DCP) – *Residential Development* and DCP 1 – *Off Street Parking* also apply to the site.

North Coast Regional Environmental Plan (REP), the Coastal Protection Act 1979, and the Coastal Policy 1997 are also relevant to the subject site.

5 CONSULTATION

5.1 Public consultation

The development application was advertised in the Nambucca Guardian News on 10 June 2004 and adjoining owners/occupiers notified by mail and invited to comment from 4 June 2004 to 9 July 2004. A summary of submissions is at **Tag "E"**.

Issues raised in the submissions are considered in Section 6 of this report.

5.2 Referrals

5.2.1 Integrated Approval Bodies

The application was integrated under Section 138 of the *Roads Act 1993* and Nambucca Shire Council (as delegate for the RTA) has issued general terms of approval for the development (these are included in the proposed conditions of consent).

5.2.2 Council

The application was referred to Nambucca Shire Council for comment on 4 June 2004. Council responded in a letter dated 16 August 2004, raising no objection to the proposal subject to the imposition of a number of conditions of development consent.

5.3 Internal consultations

The North Coast Region planning team has been consulted regarding the application and has raised no significant objections.

6 CONSIDERATION

6.1 The Environmental Planning & Assessment Act, 1979

Section 79C of the EP&A Act requires the Development Application be assessed against the provision of any EPI, DCP or prescribed matter

The application and the likely impacts of the proposed development have been considered in accordance with s.79C of the Act. It is considered that the proposed development complies with the statutory controls and the relevant aims and objectives. The design principles of SEPP 65 have been satisfactorily incorporated into the proposed development. Significant issues are discussed below and, where relevant, a detailed assessment is provided.

6.1.1 State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71)

The subject site is within the coastal zone and therefore relevant provisions of SEPP 71 apply. Schedule 2 of the Policy includes “*structures greater than 13m in height*” as “state significant development”. The Minister for Infrastructure and Planning is the consent authority for development contained in Schedule 2 by virtue of Clause 10(2) of the Policy. As the proposed development involves the construction of a 14m high building, the Minister is the consent authority in this instance.

The matters for consideration in Clause 8 of the Policy are addressed at Tag “F”.

6.1.2 Coastal Protection Act 1979

The proposed development will be consistent with the objectives of the Coastal Protection Act 1979. The proposal will not restrict public pedestrian access to coastal areas, and it is not considered the proposal will have a detrimental impact on the coastal environment.

6.1.3 NSW Coastal Policy 1997

The proposed development will be consistent with the goals and objectives of the NSW Coastal Policy 1997. The proposal will not restrict public access to coastal areas, and it is not considered the proposal will have a detrimental impact on the coastal environment. The proposal will not detrimentally impact on the aesthetic qualities of the coastal zone.

6.1.4 North Coast Regional Environmental Plan

Clause 51 – Tall buildings

This Clause provides that the consent authority shall not, without the concurrence of the Director of DIPNR, grant consent to a development application for the erection of a building over 14m in height.

The term height is defined as follows;

“In relation to a building, means the greatest distance measured vertically from any point on the building to the natural ground level immediately below that point.”

As indicated on the application plans, the proposed building will not exceed 14m from natural surface level to the highest part of the building. The Directors concurrence is therefore not required in this instance.

6.1.5 Nambucca Local Environmental Plan 1995

Clause 25 - Zoning

The subject land is zoned 2(b) Residential (Medium-High density) under the NLEP 1995. A residential flat building is permissible with development consent.

Clause 28 - Height controls

Clause 28(1) sets a maximum 14m height limit in the 2(b) zone. Clause 28(2) requires Council to consider height limits specified in any DCP. DCP 3 - *Residential Development Code* also sets a 14m height limit for this site. The development has been designed to comply with the 14m height limit, however, RLs for the roof ridge line need to be provided to verify the roof levels relative to the survey data provided with the application. Accordingly, an appropriate condition of development consent has been recommended restricting the building to a height of 14m, to be verified by the submission of RLs.

The height of the development will be significantly less than adjoining developments to the east and west and will be in keeping with the general character envisaged for Liston Street.

Clause 29 - Density Controls

For units greater than 85m² in the 2(b) zone, a site area of 155m² per unit is required. A total of 14 units all greater than 85m² are proposed, which would require a site area of 2170m². The site area is 1765m², which would allow for only 12 units rounded up to the nearest whole number. The site area is therefore 405m² or 18.6% less than required.

A SEPP 1 objection to the density development standard has been submitted by the applicant (refer to **Tag “G”**). The applicant considers that compliance with the standard is unreasonable and unnecessary in the circumstances, as the development generally satisfies the numerical and amenity criteria applicable to the development.

In consideration of this matter, it is noted that Council’s density control applies to the whole 2(b) zone, regardless of the applicable height restrictions, which vary within the zone. Most land within the 2(b) zone is affected by an 8m height limit. There would be

less likelihood of exceeding the maximum density in those areas where an 8m height limit applies, as opposed to a site where a 14m height limit applies. It would be logical to consider that a site with a greater height limit could potentially yield more units than a site with a lesser height limit. Variations to the density standard should be considered with this in mind.

The test is to determine whether other critical controls can be complied with, such as height, solar access, streetscape presentation, on-site car parking, open space and setbacks. Where such controls can be adequately met, then a variation to the density standard can be looked upon favourably. As detailed elsewhere in this report, the LEP height and DCP 3 development criteria can generally be complied with, subject to further consideration of the setback variations for the top floor level (see DCP 3 setbacks).

The density variation will also maximise the development potential of the site, without adversely affecting the environmental features of the land, which is a requirement of the North Coast REP (clause 43) for residential development. Therefore, the SEPP 1 objection to the density standard is considered worthy of support in the circumstances.

Clause 65 - Services

Adequate water, sewer and drainage services can be made available to the land. All weather access is available and standard conditions should apply regarding telephone and electricity services.

Clause 66 - Acid Sulfate Soils

The land is affected by Class 5 Acid Sulfate soils. Any potential impacts will need to be considered, although it would appear that soils below 5m AHD will not be affected by the development.

6.1.6 Nambucca Council DCPs & Policies

DCP 1 - Off Street Parking

The following table summarises compliance with DCP1.

Control	DCP Requirement	Proposal (Minimum)	Compliance (Yes/No)
No. of spaces	1.5 spaces per unit 85m ² to 125m ² gfa* = 18 spaces; plus 2 spaces per unit > 125m ² gfa = 4 spaces; plus 1 visitor space per 5 units = 3 spaces; = 25 spaces in total.	25 spaces	Yes
Dimensions of individual spaces	2.6mx5.4m standard 2.9mx5.4m (end bay)	2.6m x 5.5m 2.9m x 5.4m	Yes
Clearance height (covered parking)	2.2m 2.5m (disabled)	2.2m Undetermined	Yes Condition to ensure 2.5m clearance height for disabled space.

Control	DCP Requirement	Proposal (Minimum)	Compliance (Yes/No)
Aisle width (2 way)	6.5m	6.4m	Car spaces can be reduced in length to 5.45m to allow for extra 0.1m aisle width.
Turning Circle	RTA Standard	Standard	Yes
Disabled Parking	1 space @ 3.2mx5.4m	1 disabled space @ 2.6m x 5.4m	Area is available for the width to be increased to 3.2m. Condition to apply.

*gfa = gross floor area.

DCP 3 - Residential Development Code

Height and Density

These issues have been discussed under the relevant NLEP clauses.

Visual Bulk

The development will be in keeping with the general character and scale of the street and adjoining development. The front façade has been divided into distinct components which add visual variety and reduce apparent bulk.

Setbacks

Front setbacks are addressed under DCP 11 below. For side setbacks, Council's DCP requires that for that part of the wall less than 8m in height, a 2.4m setback applies. For that part of the wall over 8m, a setback must be in accordance with the following formulae:

Setback = 2.25m + H/4, where H is the height of the uppermost ceiling above ground level.

Where the site experiences a cross-fall, one end of the wall will be lower than the other. In such instances, it is considered practical to use the median wall height, rather than the maximum wall height. The median height of the side walls is 11.4m (west) and 12m (east). On this basis, those components of the side walls above the 8m mark (predominantly the top floor level) would have to be setback 5.1m to the west boundary and 5.25m to the east boundary to comply. (Note that the maximum wall height for the west elevation is the same as the median, but for the east elevation it is 1.2m higher than the median, i.e. 13.2m).

The proposed side walls are setback 3.0m from both the west and east boundaries. The setbacks of the west and east walls up to a height of 8m are therefore setback 0.5m more than required. Above the 8m height, the top floor level and part second floor level are 2.1m and 2.2m closer than permitted to the west and east boundaries respectively (refer to Sketch 1 at **Tag "H"** illustrating extent of variation). As Sketch 1 shows, the extent of variation is not substantial. However, the variation must be considered in the context of adjoining development.

The encroachment to the eastern boundary is caused primarily by the covered roof terrace associated with Unit 13. This will directly face 'The Palms' development. A screening device has been proposed along the edge of the terrace, but specific design details have not been submitted. A greater separation distance between the two developments could be achieved by reducing the width of the roof terrace, i.e. by installing any screening device further back from the roof terrace edge, with a corresponding decrease in the width of the open roof structure over the terrace area. However this would appear to achieve little in terms of an overall reduction in apparent bulk, or reduction in potential amenity impacts on the adjoining property. The proposed setback will achieve the performance requirements of the DCP in that: the development will not result in a significant loss of existing privacy due to the proposed privacy screen; access to natural light and direct sunlight will not be compromised beyond that level allowed by the DCP; and view sharing will be maintained through a limited building depth on the subject site. In this regard, a building designed with an east-west orientation (as is proposed) will cause far less adverse impact on adjoining properties (e.g. loss of views, privacy and sunlight) than a building orientated north-south, as is the case with the existing 'Sungleam' building and 'The Palms' building currently under construction.

Further, the perceived bulk of the 4th level of the development when viewed from Liston Street has been reduced through the physical separation of the two penthouse units. Thus the proposed fourth storey will read as two separate dwellings, each with generous deck areas providing front, rear and side setbacks to each unit. A progressive stepping of the building, as suggested in the DCP controls, would significantly reduce the visual amenity of the building, particularly as viewed from the public domain.

The encroachment to the western boundary is caused primarily by the western wall of Unit 13. This will directly face the Sungleam development. A greater separation distance between the 2 developments could be achieved by moving Unit 14 closer towards Unit 13, as they are currently separated by a 3.3m wide terrace area. This would require the lift-well and fire stairs to also be moved however, which would destroy the internal layout of all units (on all levels) on this side of the proposed complex. The Sungleam building itself is setback approximately 6.5m from the side boundary with 3 Liston Street, meaning the two buildings will be separated by at least 9.5m, thereby allowing adequate access to natural light and ventilation for both buildings. No windows are proposed in the side wall to the proposed building, thereby eliminating potential privacy issues.

Solar Access

The proposed and adjoining units will receive at least 3 hours of direct sunlight per day in mid winter, as required.

Streetscape

Front entrances and living room windows and balconies will face the street. Parking is confined to basement parking level with a single entry/exit point, such that garages and parking areas will not dominate the streetscape. Front courtyard walls are limited in height to 1.2m. A condition of any approval is recommended to ensure that the front setback does not present any excessively high walls to the street.

Energy efficiency

The individual units are orientated generally on a north-south axis, allowing for direct north light to living areas and balconies. The open interior design will allow for adequate cross ventilation and cooling breezes in summer. Windows have been minimised in the west elevation to reduce summer heat impact. Masonry building materials will allow for adequate insulation.

Privacy and security

The orientation of the units and balconies is such that they present side walls to adjoining residential unit blocks to the east and west, to minimise any potential privacy impacts. The exception to this is Unit 13 on the top floor which has a terrace facing 'The Palms' development currently under construction. However, a privacy screen is proposed to reduce overlooking.

The street, entranceways and semi private front courtyards are overlooked by living areas thereby providing security through casual surveillance.

Access and circulation

Pedestrian access is via 2 main entrance ways to the street front. A 1.5m wide public footpath is to be provided in front of the development. Vehicular access is via a single entry/exit point on the eastern side of the land to a basement parking level, which will allow for safe and efficient movement and separation of pedestrians and vehicular traffic.

Stormwater management

Stormwater is to be retained in an underground tank for garden re-use. The site will also be connected to the main stormwater line in Liston Street.

Open Space

The 4 ground floor units will have south facing private courtyards with minimum dimensions of 4m and areas of 48m². These exceed Council's requirement of 25m² minimum private courtyard space. In addition, the ground floor units will have north facing balconies and 3 of the units will also have north facing semi-private courtyards.

Each of the first and second floor units will have a north and a south facing balcony, with combined minimum balcony space of 31m², and a minimum balcony dimension of 2.5m. This exceeds Council's minimum requirement of 10m² for balconies with minimum 2m dimensions. The 2 top floor level units will each have 105m² of roof terrace space, primarily with a southerly aspect to enjoy the substantial views available.

Landscaping

No significant trees exist on subject site. The landscape plan submitted incorporates a mix of hard paved and landscaped areas, with Tuckeroo trees to be planted both on site and on the embankment (Council land) in front of the development.

Site facilities

A garbage room is proposed within the basement level. A communal drying facility is proposed at the rear of the development. Standard conditions are recommended to ensure the provision of such facilities is to an adequate standard.

DCP 11 - Building Setbacks

The proposed building will be setback 8m from Liston Street, with balconies setback 6.6m to the street. This complies with the standard residential 6m front setback requirement.

Section 79C of the EP&A Act requires the likely Environmental, Social or Economic Impacts of the development be assessed.

Environmental, economic and social impacts of the proposal have been largely addressed in detail previously in this report. It is considered that the proposal will have a beneficial social and economic impact in the locality and that there will be minimal adverse environmental impacts.

Section 94 contributions

Conditions for public reserves and lifesaving contributions will apply to any consent issued for the development on the basis of 12 x 2 bedroom and 2 x 3 bedroom units. Two (2) credits will apply for two the existing lots.

Water and sewer charges

The standard condition will apply to any consent issued for the development on the basis of 14 units less two credits for the existing lots.

7 CONCLUSION

The Minister for Infrastructure and Planning is the consent authority.

The application has been considered with regard to the matters raised in s79C of the Act and Nambucca Council who were consulted and provided general terms of approval under the Integrated Development Provisions within the Act.

The application has been notified in accordance with the Regulations. All submissions received in the period prescribed by the Regulations have been considered.

The SEPP 1 variation to the density development standard is supported. The proposal is considered to generally comply with the intent of the relevant Council planning requirements applicable to the development and land.

On balance, it is considered that the proposed development is acceptable and should be approved.

8 RECOMMENDATION

It is recommended that the Minister for Infrastructure and Planning pursuant to section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended) and clause 10 of State Environmental Planning Policy No. 71:

- (A) grant **consent** to the application subject to conditions (Tagged “**A**”),
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- (C) authorise the Department to carry out post-determination notification.

Prepared by:

Endorsed:

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