

DEPARTMENT OF PLANNING

——— Office of Sustainable Development Assessment and Approvals ———

Planning Assessment Report

Development Application DA 20-1-2004

1 SUMMARY

This report is an assessment of the proposed development the subject of DA 20-1-2004.

The application seeks consent for 5 tourist accommodation units with car parking.

The Minister for Planning is consent authority under Clause 10 of State Environmental Planning Policy 71.

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

2 BACKGROUND

Site and Context

The site is located at 17 Fegan Street, Huskisson in the Shoalhaven local government area.

The development application was lodged with the Department on 22nd January, 2004 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

The subject site is Lot B, in Deposited Plan 390332. It is 1011m², rectangular in shape and has street frontage to Fegan Street and Kent Lane towards the rear. Development on the site comprises a brick cottage with a tiled roof and a small fibro cement shed. A Site plan is at **Tag B**.

A site visit was conducted on 12th February 2004.

3 THE PROPOSED DEVELOPMENT

The development application seeks consent for:

- demolition of the current structures on the site;
- removal of 4 trees from the site and the retention of 1 tree;
- construction of 5 tourist accommodation units comprising :
 - o a 2 storey, 5.5m high rectangular building fronting Fegan Street containing 2 x 3br units each with a second storey recreation room, and ;
 - o a 2 storey, 8.5m high rectangular building at the rear (Kent Lane) frontage containing 3 x 3br units each with a recreation room and large dormer at roof level;
- 7 secured underground basement carpark spaces with access from the rear lane and one car park space on ground level (plans shown at **Tag C**); and
- subdivision of the development into 5 strata lots.

4 STATUTORY FRAMEWORK

4.1 Statement of permissibility

The subject site is zoned Huskisson Foreshore Business Development Zone 3(g) under Shoalhaven Local Environmental Plan 1995. The proposal for "Tourist Accommodation" is

permissible with development consent. The proposal for the Strata Titling of the units does not comply with DCP No. 99 or DCP No.100.

“Tourist Accommodation” is defined in the LEP as : “ a dwelling used, designed, constructed or adapted to be used for the provision of holiday accommodation, not permanent occupation, being one of a group of similar dwellings forming part of a tourist facility.”

Council passed resolution 92.0496 adopted 3/3/1992 and DCP No.100 to ensure that tourist accommodation is not used as permanent residences. The resolution restricts the provision of laundry facilities and requires subdivision to be community title only and to have a management statement acknowledging their use as holiday accommodation and a restriction on the period of stay.

The proposed development does not comply with DCP No.99, DCP No.100 nor Council's resolution because:

- by providing internal laundries as opposed to a common laundry it is designed to function for permanent residences;
- strata title is proposed not community title;
- there is no management statement acknowledging the units' use as holiday accommodation with a restriction on the period of stay.

4.2 Instrument of refusal and other relevant planning instruments

The site is defined as a 'Tourist Facility' under the provisions of State Environmental Planning Policy No.71 – Coastal Protection (SEPP No.71) and is therefore State Significant Development. The Minister is the consent authority under clause 10 of SEPP No.71.

The environmental planning instruments, draft environmental planning instruments, development control plans, and regulations applicable to the land to which the development application relate are as follows:

- *State Environmental Planning Policy No 71 – Coastal Protection (SEPP 71);*
- *Shoalhaven Local Environmental Plan 1995;*
- *Jervis Bay Regional Environmental Plan 1996;*
- *Development Control Plan No.99 – Huskisson Foreshore Business Development Zone 3(g) Duncan, Bowen, Fegen and Nowra Streets.* The objectives of the DCP No. 99 are to protect and enhance the natural environmental and the cultural heritage of the area by encouraging development which recognises good aesthetics and urban design principles and which compliments the surrounding natural environment.
- *Development Control Plan No. 100 – Subdivision Code – Element TO1 of this DCP* “Tourist Accommodation Subdivision” is “ To ensure that developments approved as Tourist Accommodation” continues to operate for this purpose should the property be subdivided to allow separate ownership of the units/dwellings;” “ ... subdivision of tourist related accommodation shall be by way of community title. “... Council shall require a condition and a restriction limiting the maximum period of occupation to all units dwellings ...”.

Application of these planning instruments is discussed under in the Issues in section 6 of this report and the Compliance Table (**Tag D**).

4.3 Legislative context

The development is State Significant Development by virtue of State Environmental Planning Policy No.71 – Coastal Protection.

5 CONSULTATION

Public consultation

The application was notified, in accordance with the Regulations and Shoalhaven City Council's notification policy as follows :

Notifications – landowners/occupiers	Forty six (46) adjoining and nearby landowners/occupiers were notified of the proposed development.
Newspaper advertisements	Advertised in South Coast Register on 16 th July, 2004.
Exhibition dates	Start: 19 July, 2004. End: 17 th August, 2004.
Exhibition venues	▪ Planning Information Centre, 20 Lee Street Sydney ▪ Illawarra/South Coast Regional Office – Level 2, Block G 84 Crown Street, Wollongong

Eight (8) submissions were received regarding the Application. The submissions are at **Tag E**. Significant issues raised are considered in Section 6.2 of this report.

The submissions raised issues regarding the bulk of the development, minimum set back, the need to preserve the existing streetscape, and the use of Kent Lane for the main site access.

Referrals

5.2.1 Integrated Approval Bodies

The application is not integrated development.

5.2.2 Council

The application was referred to the Shoalhaven City Council on 13 July 2004 in accordance with Environmental Planning and Assessment Act, 1979. Council responded on 20 August 2004.

Council issues are discussed in detail in Section 6.2 of this report. Council's full submission is at **Tag E**, with additional conditions provided on 8th October 2004.

6 CONSIDERATION

The Environmental Planning & Assessment Act

6.1.1 Section 79C

The application and the likely impacts of the proposed development have been considered in accordance with Section 79C of the Act. Significant issues are discussed below in Section 6.2, and, where relevant, a detailed assessment is provided as noted in the table below. An assessment against clause 2 and 8 of State Environmental Planning Policy No.71 – Coastal Protection is at **Tag F**.

The subject site is considered unsuitable for the development as currently proposed. Submissions have been considered and issues raised in submissions are discussed in Section 6.2. The proposal is deficient regarding several aspects of its design. These shortcomings are discussed below, demonstrating that the proposal does not constitute an "acceptable solution" in terms of the performance criteria of the DCP. In this regard it is considered that the objections to the application show how community values and concerns match the outcomes sought by the DCP. The objections thus add substantial weight to a conclusion that the application should be refused. Accordingly the application is considered not to be in the public interest and refusal is recommended.

6.2 Issues

6.2.1 Building Bulk (FSR) and Design

- Issue:* The development presents excessive bulk in relation to other developments in the area.
- Raised by:* Shoalhaven City Council; Objectors
- Consideration:* The “site density” (FSR) is to be a maximum of 0.6:1 as stated in DCP No 99. A third storey is proposed within the steeply pitched roof area of the rear building. The proposed FSR of 0.59:1 complies with the 0.6:1 limit.
- Resolution:* Despite compliance with the FSR limit, the form of both buildings lacks integrity. In particular, the rear building is poorly composed, featuring several mis-matched roof styles and prominent dormer windows within the roof. This combination makes a visually top heavy, bulky building.

6.2.2 Building Bulk (Envelope and Setbacks)

- Issue:* The development presents excessive bulk in relation to other developments in the area.
- Raised by:* Shoalhaven City Council; Objectors
- Consideration:* The desired future character of the zone is to allow for building bulks greater than those buildings that characterise the area at present. The roof ridge of the taller, rear building is within the maximum height of 8.5 metres. Notwithstanding, the DCP requires a 9.5m setback from the rear boundary to Kent Lane. The rear building is set back 5.0m thus falling well short of the 9.5m minimum. The result is that the building appears bulky in relation to the width, breadth and area of the site. The South elevation of the front building facing Fegan street is set back 5m, not the 10m DCP minimum for buildings containing 2 storeys. This constitutes an unnecessary contribution to the building bulk when viewed from the street.
- Resolution:* The rear building complies with the height limit. Notwithstanding, its substantial intrusion into the DCP building rear setback is not, in the terms of the DCP, an “acceptable solution” to achieve the desired future character of the area regarding building bulk contained by the DCP defined envelope.

6.2.3 Removal of trees

- Issue:* Removal from or likely damage of trees in the site is not in accordance with DCP requirement to retain certain trees to contribute to the locality's character.
- Raised by:* Objectors; Shoalhaven City Council
- Consideration:* DCP No. 99 notes that trees identified as “contributory” are to be retained and integrated with the redevelopment of the land. There are 5 contributory trees on the site, 2 of which are native. The application proposes the removal of 4 trees of the including tree no. 2, (exotic) from the front garden. It is proposed to retain a major spotted gum specimen tree no.6, (local native) at the rear of the site. The arborist's report submitted indicates that this tree would be unlikely to survive given the close proximity of the footprint of the proposed rear building.
- Resolution:* The proposal to remove the trees and the likely threat to the remaining tree indicates the proposal does not consider the retention of trees on the site (as sought by the DCP), a major constraint to development. Better outcomes regarding retention trees would be possible if future applications achieved the DCP guideline to amalgamate sites.

6.2.4 Use of development

- Issue:* The 3(g) Development Zoning of the site requires development upon it to be used for tourist accommodation.

- Raised by:* Objectors and Shoalhaven City Council
- Consideration:* The "land use activities intent" of DCP No. 99 is to use the land for tourism purposes to reinforce the economic base of Huskisson and the Jervis Bay region. To reinforce this intent, Council passed resolution 92.0496 adopted 3/3/1992 to ensure that tourist accommodation is not used as permanent residences. DCP No. 100 "Tourist Accommodation Subdivision" has the same effect as the resolution. Both DCP 100 and the resolution requires in tourist accommodation units a laundrette to be provided within the kitchen or bathroom and a larger common laundry provided in the development. Also that subdivision be limited to community title with a management statement acknowledging their use for limited stay holiday accommodation.
- Resolution:* The application is for the strata title subdivision of the proposed units, not community title as required by Council's DCP 100 and resolution. The units internal layout proposes laundrettes in the hallways rather than in the kitchen or bathrooms. The application does not satisfy any part of Council's resolution and thus fails to comply with the objective of the zone and the intent of the DCP.

6.2.5 Maintaining existing streetscape

- Issue:* Disabled car parking at the front of property is detrimental to the existing streetscape of Fegan Street.
- Raised by:* Shoalhaven City Council; Objectors
- Consideration:* The car park needs to be close to Unit 1 for disabled access and will only be used for disabled parking.
- Resolution:* After consideration of the initial application, the applicant was requested to relocate this parking space. The plans now under consideration do not relocate the parking space.

6.2.6 Compatibility of proposal with surrounding development

- Issue:* The style of the development lacks character and is not in keeping with neighbouring properties.
- Raised by:* Objectors, Shoalhaven City Council.
- Consideration:* The DCP seeks development on the site that is sympathetic to the scale of and appearance of the existing seaside character of Huskisson.
- Resolution:* In encouraging tourism development, the DCP envisages an increase in the scale of buildings in the 3(g) zone as opposed to the remainder of Huskisson. The DCP sets the building envelope to accommodate this scale increase. The proposal substantially exceeds this envelope (rear setback) resulting in a bulky development with the rear building particularly out of proportion. The proposal thus fails to reinforce the detached character of the area sought by the DCP performance criteria. The scheme has a poorly resolved building design that lacks integrity of its components as evidenced by the conflicting styles of roof window and gable treatments. The proposal thus fails to meet the DCP objective "to encourage development which recognises good aesthetics and urban design principles ...".

7 CONCLUSION

The Minister for Planning is the consent authority. The application has been considered with regard to the matters raised in section 79C of the Act and the Shoalhaven City Council and Shoalhaven Water who were consulted and provided comment.

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

On balance, it is considered that the proposed development does not satisfy the relevant controls for the reasons set out in this report. It is recommended that the application be refused.

8 RECOMMENDATION

It is recommended that the Acting Deputy Director-General, Office of Sustainable Development Assessment and Approvals as delegate for the Minister for Planning as described by the Instrument of Delegation dated 12 September 2005 and 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 – Coastal Protection:

- (A) **refuse** consent to the application for the reasons set out in the determination at **TAG A**.
- (B) **authorise** the Department to carry out post determination notification.

For Ministerial Approval
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