



Planning Assessment Report

Development Application DA 235-09-2004

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number DA 235-09-2004.

The development application was lodged with the Department on 21 September 2004 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

A site visit was conducted of the site on 25 November 2005.

The application seeks consent for a three (3) lot subdivision at Lot 72, DP 617047, Marine Parade, Fishermans Reach, Kempsey.

The Minister for Planning is the consent authority for the proposal under clause 10(2) of State Environmental Planning Policy No. 71 – Coastal Protection (SEPP71).

It is recommended that the development application be determined by **granting consent** subject to conditions tagged “A”.

2 BACKGROUND

2.1 Site Context

The property description of the site is located at Lot 72 in DP 617047, known as Fisherman’s Trail, Fisherman’s Reach in the Kempsey Shire Council Local Government Area.

The site is irregularly shaped and comprises approximately 0.44 hectares. Access is currently gained via Fishermans Trail although the site also has frontage to Marine Parade. A scattering of eucalyptus and ornamental trees are present on the site.

There is an existing dwelling and garage on the site adjacent the sites northern boundary beyond which lies Macleay River on the opposite side of Fishermans Trail. Rural residential development surrounds the site to the east and west.

A site context plan is tagged at “B”.

2.2 Master Plan Waiver MP 42-09-2004

An application for a master plan waiver for the site was granted under delegation on 5 December 2005 pursuant to clause 18(2) of SEPP71.

3 THE PROPOSAL

The development application seeks consent for the subdivision of the site into three (3) allotments. No built development is proposed as part of this application although it is anticipated that proposed lots 2 and 3 will contain residential dwellings in the future. Dwelling envelopes have been identified accordingly.

Proposed lots 2 and 3 will have sewerage systems on site as there is currently no reticulated effluent disposal available. The existing access point from Campbell Way is

to be maintained in perpetuity to continue to serve proposed lot 1. Three new access points are proposed via Marine Parade. A plan showing the proposal is tagged at "C".

3.1 Amended Plans

Following a preliminary assessment of the development application and accompanying master plan waiver application the Department informed the applicant on 28 June 2005 that further information was necessary before the assessment of each application could be completed. The proposed method of on-site effluent disposal was one of a number of issues raised by the Department. Consequently, a decision was made to stall determination of the development application until such time as the master plan waiver application was determined.

The applicant provided additional information in an attempt to address this issue and submitted it to the Department for its consideration. The master plan waiver application was subsequently approved on 5 December 2005 enabling assessment of the development application to recommence. On 4 January 2006 the applicant submitted amended plans and additional documentation to address other outstanding issues. The most significant change was to reduce the number of lots proposed from four (4) to three (3).

These amendments differ only in minor respects from the development application submitted and do not give rise to any additional impacts. Accordingly, these amendments were accepted as a replacement application in accordance with clauses 55 and 90 of the *Environmental Planning & Assessment Regulation 2000* (the Regulations). In accordance with clause 90 of the Regulations further notification of the application was not undertaken (or alternatively, describe re-notification process). The applicant was advised of the acceptance of the amended plans on 10 January 2006.

4 STATUTORY FRAMEWORK

4.1 Statement of permissibility

The proposed development is permissible with development consent in accordance with clause 9 of Kempsey Local Environmental Plan 1987 as amended. The entirety of the site is zoned 2(v) Village or Township.

4.2 Instrument of consent and other relevant planning instruments

Matters for consideration by the determination authority are listed in Section 79C of the *Environmental Planning and Assessment Act 1979*.

It is considered that the proposal is consistent with the aims and objectives of Section 79C. The proposal is considered consistent with the current zoning of the land and with the objectives of the relevant instruments. Any potential impacts of the proposed development are discussed in Section 6.2 of the assessment report and can be managed to acceptable levels.

Pursuant to clause 10 of SEPP71 the Minister is the consent authority. SEPP 71 provides planning objectives to protect and manage the natural, cultural, recreational and economic attributes of the NSW coast.

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;*
- *North Coast Regional Environmental Plan (NCREP);*

- *Kempsey Local Environmental Plan 1987 (KLEP 1987);*
- *Development Control Plan No 5 – Fisherman's Reach;*
- *Development Control Plan No 22 - Local Housing Strategy;*
- *Development Control Plan No 27 – Acid Sulphate Soils;*
- *Development Control Plan No 32 – On-site Sewage Management Strategy;*
- *Development Control Plan No 36 – Engineering Guidelines for Subdivision and Development;*
- *NSW Coastal Policy 1997.*

Application of these planning instruments is discussed in the Compliance Tables at Tag “D”.

4.3 Other statutory provisions

The *Coastal Protection Act 1979* and the *Coastal Policy 1997* are also relevant to the subject site.

5 CONSULTATION

5.1 Public consultation

The application was notified, in accordance with the regulations. Surrounding residents, Kempsey Shire Council and other relevant agencies were notified and given the opportunity to comment on the development.

Notifications landowners/occupiers	– 51 local residents were notified by letter.
Site Notices	A site notice was erected.
Exhibition dates	Start: 05.11. 04. End: 19.11.04.
Exhibition venue	▪ DIPNR, 20 Lee Street, Sydney ▪ DIPNR, 49 Victoria Street, Grafton ▪ Kempsey Shire Council, Cnr Elbow & Tozer Streets, West Kempsey

One submission was received from a local resident who objected on the basis that the proposal contravenes the proposal contravenes Development Control Plan 5 (Tag “E”). Issues raised are considered in Section 6.2 of this report.

5.2 Referrals

5.2.1 Integrated Approval Bodies

The application was integrated under the Rural Fires Act 1997 and the Rural Fire has issued general terms of approval for the development subject to no specific conditions of consent (Tag “F”).

5.2.2 Council

The application was referred to Kempsey Shire Council on 29 November 2004. Council responded on 28 February 2005 (original proposal) and 6 March 2006 (amended proposal) raising issues regarding water and sewerage reticulation, stormwater drainage and road works (Tag “G”).

5.2.3 Other Agencies

The Department of Environment and Conservation (DEC) was consulted and has raised no objections to the proposal.

5.3 Internal consultations

The North Coast region, planning team was consulted and has raised no objections to the proposal.

5.4 External Agencies

GHD were engaged by the Department to assess the suitability of the lots to be created by the proposed subdivision for onsite sewage management using the Ecomax effluent disposal system.

GHD found that the Ecomax system is a viable option for onsite effluent disposal on the new lots to be created by the proposed subdivision provided that the system is planned, designed, constructed, operated and maintained correctly. It is recommended that the developer demonstrate that adequate and appropriate space is set aside for the Ecomax cells. (GHD assessment Tag "H")

6 CONSIDERATION

6.1 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.

The subject site is considered suitable for the proposed development. Submissions have been considered and issues raised in submissions are discussed in Section 6.2. On balance, the proposed development is considered to be in the public interest.

6.2 Issues

6.2.1 Effluent Disposal

Issue: There is no reticulated sewerage system available to the site.

Raised by: Kempsey Shire Council; DOP (Urban Assessments)

Consideration: The applicant submitted an on site effluent disposal assessment report (the Coffey report) to accompany the development application. This indicated that an on site effluent disposal system for each proposed dwelling envelope could be operated without significant detrimental impact on the existing environment.

In consultation with Council, the Department considered that the Coffey report did not adequately address this issue. It resolved to stall determination of the development application until such time as the master plan waiver application was determined in accordance with clause 8(2) of SEPP 71.

In response to Departmental consultation as part of the applicant's master plan waiver application, the Natural Resources Commission (NRC) recommended that any decision to waive the need for a master plan is subject to the Minister being satisfied that a viable long term effluent management system being available.

The applicant subsequently instructed Coffey to produce a supplementary report to address the outstanding issues. The number of lots proposed were reduced from four (4) to three (3) to provide sufficient space to accommodate an on site effluent disposal system on each proposed lot.

The Department forwarded the revised plans and documentation to Council and

requested an independent review of the documentation by GHD. Both Council and GHD confirmed that the proposed onsite effluent disposal system on the new lots is acceptable subject to the recommendations made by Coffey being implemented and the number of lots being reduced from four (4) to three (3) (i.e. two newly created lots to be created).

Resolution: GHD's assessment of the documentation found that the Ecomax onsite effluent system proposed is a viable option on the proposed new lots. Conditions of consent have been imposed to ensure that the effluent disposal system is constructed in accordance with the Coffey's original and supplementary reports and the development is to be carried out in accordance with the submitted revised plans and documentation.

6.2.2 Flooding

Issue: Part of the site lies within the 1 in 20 and 1 in 100 year flood level.

Raised by: DOP (Urban Assessments); local resident

Consideration: The applicant reduced the number of proposed lots from four (4) to three (3) to ensure that at least 500 square metres of each proposed lot is above the 1 in 20 and 1 in 100 year flood levels based upon Council's Lower Macleay Floodplain Management Plan.

During the course of the assessment, the applicant submitted a brief flood statement together with some supporting information which was sourced from Council. However, the Department is not satisfied that this information is sufficient to justify the proposal.

Resolution: A condition of consent has been imposed which requires the applicant to submit a full flood risk assessment to Council for its endorsement prior to the issuing of the subdivision certificate.

6.2.3 Acid Sulphate Soils

Issue: The site lies within an area identified as low Acid Sulphate Soil (ASS) risk.

Raised by: DOP (Urban Assessments)

Consideration: The site lies within a class 4 area of ASS risk. The Department has consulted Council who confirmed that this area will have limited, if any, ASS present. Notwithstanding this the Department is of the view that further investigation is required in the absence of a Preliminary Soil Assessment.

Resolution: A condition of consent has been imposed which requires a Preliminary Soil Assessment to be submitted and approved by Council prior to the issue of a Subdivision Certificate. If significant ASS risk is identified, an Acid Sulphate Management Plan will need to be prepared and implemented accordingly.

6.2.4 Water Reticulation

Issue: There is no reticulated water supply available to the site.

Raised by: Council; DOP (Urban Assessments)

Consideration: Each newly created lot will be connected to Council's reticulated water supply.

Resolution: Conditions of consent have been imposed requiring monetary contributions towards district and local water supplies and requiring the applicant to comply with the requirements of relevant water authorities when connecting to all reticulated services.

6.2.5 Bushfire Hazard

Issue: The land is zoned bushfire prone under the Rural Fires Act 1997. The application is therefore integrated with NSW Rural Fire Service, under section 100B of the Rural Fires Act 1997.

<i>Raised by:</i>	Kempsey Shire Council; DOP (Urban Assessments)
<i>Consideration:</i>	RFS were notified of the proposal and issued a Bush Fire Safety Authority with no specific conditions.
<i>Resolution:</i>	The Department is satisfied that no bushfire hazard exists. Future applications for residential development on the site will require submission of a Bushfire Assessment.

6.2.6 Section 94 Contributions

<i>Issue:</i>	The proposed development attracts Section 94 contributions.
<i>Raised by:</i>	Kempsey Shire Council; DOP (Urban Assessments)
<i>Consideration:</i>	This is acceptable to the Department and the applicant.
<i>Resolution:</i>	Following negotiations between the applicant, Council and the Department, a condition of consent has been imposed requiring the applicant to pay the required contributions to Council prior to issue of a Subdivision Certificate.

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 Rural Fire Service 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 proposal is considered to be consistent with the surrounding, existing properties in Fisherman's Reach, being rural residential lots within the coastal zone. It is not considered that the application will result in any unreasonable impacts on the amenity of the coastal zone, existing utilities, foreshore access or on coastal processes.

The proposal does not seek approval for any building works. Any future development will require development consent.

On balance, it is considered that the proposed development is acceptable and should be determined by **granting** consent.

8 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The applicant and Council were asked to provide comment on the draft conditions of consent on 15 February 2006. Following discussions between the various parties regarding proposed Section 94 contributions, stormwater, bushfire hazard and proposed road upgrading consensus was reached on 21 March 2006 and appropriate conditions of consent have been imposed accordingly.

9 DELEGATION

Under the instrument of delegation dated 12th September 2005, the Minister has delegated his functions under Section 23 of the Act to the Acting Deputy Director General, Office of Sustainable Development Assessment Approvals.

10 RECOMMENDATION

It is recommended that the Acting Deputy-Director General, Office of Sustainable Development, Assessments 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) (a) of the *Environmental Planning & Assessment Act, 1979*, and clause 10(2) of State Environmental Planning Policy No. 71:

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

Prepared by:

Endorsed by

Nicholas Hall
Planner, Urban Assessments

Michael File
Team Leader, Urban Assessments