



Planning Assessment Report

Development Application

DA 51-3-2005

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number DA 51-3-2005.

The applicant seeks consent to demolish an existing single storey residential dwelling on the subject site and construct a three storey building. It is proposed to provide five (5) residential units and six (6) serviced apartments with 15 car parking spaces to be strata subdivided into 11 lots.

The site is zoned 3(d) Business (Tourist Related) and is situated in the Kiama Town Centre.

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

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

2 BACKGROUND

2.1 Site Context

The site is Lot 1, DP 434015, 89 Manning Street, Kiama in the Kiama local government area. The subject site is located within the Kiama Town Centre and is opposite a public open space and overlooks Surf Beach. The site is reasonably level rising about one metre from the north east to the south west.

The site has an area of 743.58 m² with a Manning Street frontage of 24.035m, 26.5 m to the north east side boundary and 35.4m to the south west side boundary. The existing development consists of a residential dwelling and separate garage.

The land to the north west (rear) and north east is zoned 3(d) and a recently constructed mixed use development of three storeys high provides a café to the street frontage and residential units to the upper levels and rear of the subject site.

The subject site is the last site in the 3(d) zone and adjoins the 2(b) residential zone to the south west. There is an existing residential dwelling on the neighbouring site and medium density residential development of a maximum two storeys in height is permissible in this zone.

A plan showing of the site location is at **TAG B**.

A site visit was conducted on 22nd November, 2005.

A meeting was held on 15th December 2005 with the applicant and Robert King of King Design in response to the letter sent on 5th December from the Department. Amended plans and new information was supplied by the applicant at that time and subsequently on 7th February, 15th March, 7th April and 2nd May 2006.

3 THE PROPOSED DEVELOPMENT

The proposed development seeks consent for:

- demolition of an existing single storey residential dwelling

Proposed development of the subject site is as follows:

- construction of a 3 storey building containing five (5) residential units and six (6) serviced apartments with 15 ground level car parking spaces.
 - The ground floor consists of one (1) single bedroom serviced apartment and one (1) two-bedroom serviced apartment. Both apartments abut the boundary with the public domain. Car parking is located to the rear of the ground floor with the access to the car park abutting the front and south western boundary.
 - The first floor consists of two (2) three-bedroom residential units orientated to the street and three (3) two-bedroom serviced apartments to the rear of the site.
 - The second floor consists of three (3) residential units, and one (1) serviced apartment. Of these two (2) three-bedroom residential units front the street, one (1) two-bedroom residential unit and the two-bedroom serviced apartment are orientated to the rear of the site.

The major variation from the plans submitted and exhibited is the removal of an encroachment of the building over the public footpath of Manning Street.

Architectural Plans are at **TAG C**.

4 STATUTORY FRAMEWORK

4.1 *Statement of permissibility.*

Clause 9 of Kiama Local Environmental Plan 1996 (Kiama LEP) establishes the permissibility of tourist related commercial development in the 3(d) Business (Tourist Related) zone. Dwelling houses are prohibited except where attached to commercial or retail buildings.

4.2 *Instrument of consent*

Schedule 2 of State Environmental Planning Policy 71 – Coastal Protection establishes the development as *Significant coastal development – specified development* as it comprises tourist facilities within the coastal zone.

Consequently, the application is State Significant Development pursuant to clause 10 of SEPP 71 and the Minister for Planning is the consent authority.

4.3 *Other relevant planning instruments*

The following plans and policies are also relevant:

- *State Environmental Planning Policy No. 65 – Design of Residential Flat Buildings (SEPP 65 - Design of Residential Flat Buildings);*
- *NSW Coastal Policy 1997;*
- *Kiama Local Environmental Plan 1996 (Kiama LEP);*
- *Development Control Plan No. 13 – Kiama Town Centre (DCP 13);*
- *Development Control Plan No. 18 – Energy Smart Homes (DCP 18);*
- *Development Control Plan No. 25 – Planning for Less Waste (DCP 25);*
- *Development Control Plan No. 31 – Landscape Guidelines (DCP 31);*
- *Kiama Municipal Council Section 94 Contributions Plan Nos 1, 2 and 4.*

5 CONSULTATION

5.1 Public consultation

The application was notified, in accordance with the Regulations and with the Kiama Notification Policy, as follows:

Notifications landowners/occupiers –	18 adjoining landowners
Newspaper advertisements	Kiama Independent published on Wednesday 27 th July, 2005
Site notices	Request for site notice to be placed on site sent on 19 July 2005
Exhibition dates	Start: 28 July 2005 to 29 August 2005
Exhibition venues	▪ Information Centre, 23-33 Bridge Street, Sydney ▪ Kiama Municipal Council, 11 Manning Street, KIAMA ▪ DIPNR South Coast Office, Level 2, 84 Crown Street, Wollongong

One (1) submission was received from the neighbouring residential dwelling. The concerns expressed relate to overshadowing, loss of privacy and over development of the site. A summary of the submission is included in appendix 2. A full response to the issues is in Section 6 of this report.

5.2 Referrals

5.2.1 Integrated Approval Bodies

The application is not integrated development.

5.2.2 Council

The application was referred to Kiama Municipal Council on 19 July 2005. Council responded on 28 October 2005. A summary of Council's concerns and a brief response are attached in appendix 2.

Some of the issues raised by Council are discussed in detail in Section 6 of this report.

5.2.3 Roads and Traffic Authority

The RTA was notified on 19th July, 2005 and responded that it had no objection to the development application in principle.

5.2.4 Internal consultations

1) The Regional Office has been consulted regarding the application and has raised no objections.

2) The Urban Design Consultant raised concerns with the proposed side and rear setbacks; the orientation, overshadowing and overlooking; balconies over the street; disabled access; driveway length and boundary wall; potential for change of use of tourist units to residential units; design verification as required by SEPP 65 and full documentation as referred to in Schedule 1 Section 2(5) to the Environmental Planning and Assessment Regulation 2000 be provided.

6 CONSIDERATION

6.1 *The Environmental Planning & Assessment Act, 1979*

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 (see appendix 1). Significant issues are discussed in Section 6.2 below.

Submissions have been considered and issues raised in submissions are discussed in Section 6. The subject site is considered suitable for commercial and tourist development. The proposed development is not considered to be appropriate for the site nor in the public interest.

6.2 *Issues*

Major issues that have emerged during the assessment process are identified below

6.2.1 *Design, bulk and scale*

Issue: Whether the design, bulk and scale of the proposed development are suitable for this site.

Raised by: Department of Planning; Kiama Council, SEPP 65

Consideration This is a significant site on which development should address both a continuation of the commercial aspects of the business zone and the interface with the residential zone to which it abuts. The major issues are:

- a) presentation as a tourist/commercial development
- b) interface with residences
- c) the views.

a) DCP No. 13, Kiama Town Centre states that 'The facades of new buildings should be designed to maintain the dominant parapet line of adjacent buildings' and further states, 'respect adjacent buildings and structures through sympathetic building form, scale, detail and materials.'

Adjoining recently constructed developments in the same zone generally provide elements such as columns supporting a pergola or upper level balconies, landscaping or entry steps to the boundary. This has the effect of opening up the ground level development to the street. At first and second floor levels the adjoining developments step back further again reducing the visual impact of the bulk of the building.

The development proposes solid walls abutting the boundary at ground level, visually and physically exclusive of the public and not in sympathy with the design approach to the street of adjacent buildings. The structural frame, three stories high on the front boundary would be bulky in appearance in respect of the parapet line of adjacent building. Setbacks to the street frontage, in keeping with adjoining development would be an appropriate response.

The aims and objectives of Kiama LEP include consolidation and strengthening of existing retail/ business centres. The objectives of the zone include both: 'to provide areas which are suitable for tourist-related commercial development' and to 'assist in the consolidation of the retail centre of Kiama township'. Adjoining development in this same zone does generally provide a retail/business component to the street.

The proposal provides tourist apartments as the commercial component of

the development and tourist apartments to the ground level street frontage. Council's comment, that a retail component at ground level is more appropriate to better depict the character of the business zone, is supported.

b) The south west elevation, to the residential zoning, proposes an effectively unmodulated wall, approximately 30 metres long, enclosing the car park. An opening in the wall of 5.5 metres is proposed at the street front to provide some visibility for pedestrians and vehicle drivers. The wall is approximately 3 metres high, plus a further 1 metre high for planter boxes. ,

Although the second floor level does setback from this elevation, the proposed response at ground level to this residential zone is inappropriate. It would be preferable for this boundary to provide landscaping to reduce the bulk of the proposed development and enhance the amenity of the existing residential dwelling.

c) The amenity of future occupants of the residential units and serviced apartments as listed in SEPP 65 includes outlook. Outlook is considered significant in consideration of the limited building separation and the proposal to provide timber screens to balconies and windows from both serviced apartments and residential units. Four of the residential units are orientated to the south east and the street and have good outlook. One residential unit and the serviced apartments orientated to the remaining boundaries however rely on screens to provide visual privacy. The outlook from these units is detrimentally impacted by the proposed screens.

Conclusion: The bulk and scale of the front façade and of the south west elevation are not appropriate in consideration of their context and of adjoining building alignments.

The existing proposal does not assist in the consolidation of the retail centre and does not add to the street activation as would be preferable in this zone.

Restriction in outlook due to screens required to overcome problems with the interface with residences is not satisfactory.

Refusal is recommended.

6.2.2 **Privacy**

Issue: The visual privacy of adjoining development and of future occupants of both the residential units and the serviced apartments in consideration of the proposal to provide balconies and windows up to and on the boundary of all elevations.

Raised by: Neighbour submission, Kiama Council, Department of Planning, SEPP 65 Urban Design referral

Consideration **Ground level**

The ground level proposes serviced apartments to the street front of the site. Their outdoor open space abuts the street with timber slatted screens to provide privacy. The windows to the primary living space are proposed to be setback one metre from the public domain. Proposed planter boxes in the public domain are relied upon for additional screening.

This arrangement would be intrusive for users of both the adjoining footpath area and the future occupants of the apartments. There is also the question

of noise and security. Reliance on use of public space to provide an essential amenity is unsatisfactory.

Upper levels

On the first and second floors the primary orientation of living spaces are to the front or rear of the site. Balconies are also provided to the side boundaries from primary living spaces, bedrooms and kitchen.

Units on the street frontage overlook the street, the park opposite and across to the water views.

An inspection of the site, site photographs and the subdivision plan of the adjoining site confirms that balconies of units on the adjoining site are approx. 3 – 8 metres from the mutual boundary.

The proposal under consideration provides balconies up to the boundary at first and second floor level, overlooking the adjoining private open space balconies and the adjoining communal open space area. Planter boxes with timber slatted privacy screens above are proposed to provide visual separation at the first floor level from SA Units 3 and 4. Units 10 and SA Unit 5 are proposed to have solid balustrades with privacy screens above. The proposed screens may provide a level of privacy however they compromise the function of the balconies as outdoor open space and any views, outlook and solar access to these units.

To the north of the subject site there are private open space balconies approximately 3 metres from the private open space balconies of the proposal. The proposal to screen all the private outdoor open spaces to this orientation is not considered an appropriate response for the outlook and solar amenity of future occupants or to provide an appropriate level of visual privacy.

Balconies on the north eastern elevation of the proposed development are approximately 3 metres from balconies and windows of the adjoining development. The applicant's consultant has indicated that the relative levels of the first and second floors of the proposal 'generally align with those of the adjacent.' It is proposed to provide timber slated privacy screens to windows which look directly into the balconies on the adjoining site.

The height of the proposed units in conjunction with their proximity to the residential site on the south western side separated by 1metre wide planter boxes and some slatted screens, is considered as inadequate solution to prevent overlooking and provide an appropriate level of amenity to residential development in a residential zone.

Resolution:

SEPP 65 provides distances considered appropriate for building separation to provide acceptable amenity including visual privacy. 12m is suggested between habitable rooms and balconies; 9 metres between habitable/balconies and non-habitable rooms and 6 metres between non-habitable rooms. The proposed 3-4 metres between balconies and habitable rooms and balconies and balconies is inappropriate and unacceptable.

Timber slated privacy screens are proposed to all windows and to balconies of some units. The detail of the proposed timber screens has not been submitted however from elevations it appears that they are horizontal slats with open spaces between each slat. This is not considered to provide

appropriate privacy amenity, in particular to private open spaces.

It has been suggested that the timber screens could be either moveable or fixed. In the event the shutters are fixed they will restrict any views, outlook and natural light for future occupants of the proposal. If the shutters are moveable occupants will be required to choose between privacy and sunlight. Occupants of adjoining development will have little or no control over their privacy. The visual privacy to adjoining developments on all sides of the proposed development and of the future occupants of this proposal is considered inadequate.

Refusal is recommended

6.2.3 **Solar Access**

Issues: Requisite levels of solar access are to be provided for both adjoining sites and for the proposed development. Further shadow diagrams have been provided to the Department and it is noted that areas of skylights and clear roof sheeting are now proposed to the 2nd floor level apartments.

Raised by: Neighbour Submission, Department of Planning, Urban Design referral,

Consideration The solar diagrams submitted indicate that the neighbouring residential dwelling and its private open space will be in shade at 9.00am on June 22. By 12.00 the diagrams indicate the shadow does not effect the windows of the neighbouring dwelling. There is overshadowing of the outdoor space however the majority of the dwelling and the site have sun by 12.00.

SEPP 65 Rule of Thumb states:

'Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of three hours direct sunlight between 9am and 3pm in mid winter. In dense urban areas a minimum of two hours may be acceptable.'

The diagrams submitted give no indication of the effect of the adjoining development on the solar access to the proposal nor are the proposed screens referenced. There is apparent conflict between the solar access as shown on the plan and on the elevations.

Resolution: The skylights and roof sheeting will provide solar access however summer comfort and energy efficiency must also be considered. The submitted solar diagrams are considered unacceptable and refusal is recommended.

:

6.2.4 **Building Separation**

Issue: Boundary setbacks from residential uses.

Raised by: Neighbour submission, Department of Planning, SEPP 65, urban design referral

Consideration Kiama Council's development control plans do not require side boundary setbacks however the Residential Flat Building Code provides for building separation in consideration of the amenity of residents and adjoining neighbours.

The built form is three storeys with a 0 – 1m setback to the north east boundary and 0 - 6m from the south west boundary. The proposal is

generally up to the rear boundary with a setback of 6m at the rear north west corner of the site.

The adjoining development to the north west (rear) and north east is also a three storey building with varying setbacks. A communal open space area abuts the mutual boundary to the rear of the subject site. To the south west is a residential dwelling in a residential zone.

To protect neighbourhood amenity SEPP 65 provides distances considered appropriate for building separation to provide acceptable amenity including visual privacy. 12m is suggested between habitable rooms and balconies; 9 metres between habitable/balconies and non-habitable rooms and 6 metres between non-habitable rooms. The proposed 3-4 metres between balconies and habitable rooms is inappropriate and unacceptable.

An internal referral for urban design comment notes that the Residential Flat Design Code requires minimum separation distances between buildings depending on the accommodation. It is suggested in the urban design referral comments that the relevant distances in this instance should be half those defined in the residential flat design code (refer to page 28). This would result in a min. of 6m from habitable rooms and balcony edges to the side and rear of the property.

Resolution: It is considered that the primary consideration should be the principle of neighbourhood amenity and the provision of a design solution which provides privacy and natural light and restricts overlooking of living and outdoor open spaces to residents of this proposal and adjoining developments as well as an aesthetic response appropriate for the broader community.

By not providing appropriate building separation it is considered that the proposal borrows from neighbouring amenity and does not provide adequately for the amenity of future occupants or protect neighbouring development.

The spatial separation between buildings to the side and rear boundaries is not considered acceptable. Refusal is recommended

:

6.2.5 Landscaping

Issue: A minimum 190 sq m of landscaping is required for this proposal under the requirements of Kiama Local Environmental Plan Cl 22 (5). This area has been calculated on the residential units alone however the serviced apartments should also be considered and further landscaping provided in consideration of the residential nature of the entire development.

Raised by: Department of Planning , SEPP 65,
Consideration The proposed landscaping is in planter boxes of 1m wide to the edge of private open space balconies and approximately 89sq m is proposed. Consultation with the applicant and Kiama Council has confirmed that Kiama Council also calculate the surface area of balconies in this landscape provision. In this event the landscaping proposal numerical complies.

The objectives of Development Control Plan 31 – Landscape Guidelines, require landscaping which integrates with the architectural design of the buildings and visually reduces the bulk and scale of the building. The aims

for the medium density housing landscaping and also SEPP 65 include consideration of visual amenity, screen large-scale buildings, aid in privacy and provide planting at a scale in relation to the verticality of the building. It is also required that landscape be situated outside of private open space.

Resolution: The proposal provides no landscaping to visually reduce the bulk and scale to the street front on the subject site.

The proposal to the south west (the residential zone) of a 3-4m high wall on the boundary is not considered appropriate in bulk and scale or visual amenity and landscaping should be provided to screen this orientation. Landscaping to this orientation at upper levels, as diagrammatically shown, would assist in ameliorating the bulk and scale at upper levels.

The landscape proposal complies numerically but is not considered to comply qualitatively with the aims and objectives of SEPP 65 or DCP 31. The proposed landscaping is inadequate and refusal is recommended

6.2.7 Outdoor Open Space

Issue: The objective for Open space in the Residential Flat Design Code is to provide recreational opportunities, amenity outcomes and landscaping

Raised by: Department of Planning

Consideration The private open space provided complies numerically with Kiama Council's requirements when the hard surface of the balconies is also taken into account. The proposal to enclose balconies behind screen however will compromise the functional advantages of the balconies and does not promote 'the enjoyment of outdoor living for the apartment residents.'

Resolution: In view of the location, balconies should provide greater access to views and solar access. Refusal is recommended.

:

6.2.8 Car parking

Issue: Car parking should be adequate in numbers, accessibility and safety, with minimal adverse visual impact.

Raised by: Kiama Council, Department of Planning, Urban Design referral

Consideration **Numbers**

Council has indicated that it is presently considering car parking standards, looking to Shoalhaven Council car parking standards as a guideline. The number of spaces proposed for the units complies with Kiama Council's existing criteria. There is a requirement for one visitor parking space however it is proposed not to fulfil this requirement. This is considered acceptable in consideration of the level of public parking available.

Safety and security

Safety and security has arisen as an issue in respect to the proposed driveway 'tunnel' to the car park at the rear of the ground floor.

The visual amenity of the streetscape, in consideration of the entry to the car park, has also been raised as an issue for consideration.

Access to the car park is via an enclosed driveway approximately 17 metres

long. A 5.5 metre opening is proposed in the southwest side wall at the front boundary.

The driveway is proposed up to the property boundary adjoining the public domain and the residential property to the south west. There are security concerns in regard to this enclosed space abutting the public domain as well as safety of pedestrians due to poor visibility of vehicles exiting the site.

The viability of the proposal to open the wall of the car park to the south west for 5.5m to assist visibility for drivers and pedestrians from the south west, is reliant on the adjoining residential development removing any existing landscaping and not providing landscaping in the future. It is outside the scope of this assessment to provide requirements on adjoining development and nor is it considered desirable to restrict present or future landscaping to residential development.

To the north east side of the proposed driveway the terrace to Unit 1, abuts the public domain and screens lines of sight for drivers and pedestrians from this orientation.

Council provided examples of the adjoining development car park entry which is setback a considerable distance from the boundary. The applicant has responded that the subject site is smaller than the adjoining.

The issue of safety and security remains of concern due to the enclosed nature of the driveway up to the boundary of the subject site.

Resolution: The number of spaces provided is acceptable

To provide better security the enclosure of the car park entry should be addressed by removal of the roof to provide good light into this space.

Lines of sight to the exit as required by AS/NZS 2890.1 must be provided for the safety of pedestrians and vehicles.

The proposed access to the car park abutting the public domain is not considered adequate for safety, security of pedestrians and is not visually appropriate in the context. Refusal is recommended.

6.2.10 Facilities

Issue: Separate storage space has not been provided for the residential units.

Raised by: Residential Flat Design Code, Kiama Council and Department of Planning Assessment

Consideration The Residential Flat Design Code suggests between 6 – 10 cu m per storage space depending on the number of bedrooms in the unit. Adequate storage space should be provided preferably within the car parking level.

Resolution: Redesign of the proposal is required to provide storage spaces for the residential units.

6.2.11 Building Depth and Configuration

Issue: Whether the proposal can adequately provide appropriate amenity in

consideration of the proposed building depth

Raised by: Residential Flat Design Code, Department of Planning

Consideration The Residential Flat Design Code suggests an apartment building depth of 10-18m. Development wider than this must demonstrate satisfactory daylighting and natural ventilation are achieved.

The proposal includes 'bunk rooms' in serviced apartments 2 and 4. It has not been demonstrated that these rooms obtain adequate ventilation and that in SA4 does not obtain any direct light.

Resolution: It has not been adequately demonstrated that daylight and natural ventilation are achieved in particular to the proposed bunk rooms. Refusal is recommended.

6.2.12 Accessibility

Issue: To comply with the Building Code of Australia one apartment is to provide for people with disabilities.

Raised by: Submissions and Department of Planning

Consideration No accessibility report has been submitted with the development application

Resolution: A report pertaining to accessibility in compliance with the the requirements of the Building Code of Australia is required.

6.2.13 Energy Efficiency

Issue: DCP No. 18 Energy Smart Homes requires a minimum 3.5 star rating using NatHERS

Raised by: Department of Planning

Consideration Drawings have been submitted with ADSA stamps and some ADSA documentation however there has not been a NatHERS star rating submitted as required by DCP No. 18.

Resolution: The information submitted does not in itself provide confirmation of the energy efficiency of the residential units as required by NatHERS. Nor does is comply with the more recent BASIX requirements.

7 CONCLUSION

The Minister for Planning is the consent authority.

The application has been considered with regard to the matters raised in s79C of the Act. The application has been notified in accordance with the Regulations, and with consideration for the Kiama Municipal Council Notification Policy. All submissions received in the period prescribed by the Regulations have been considered.

A number of changes have been made to the proposal first lodged, in order to address issues raised in assessment. The changes have not resulted in a satisfactory outcome. A SEPP 65 report from the designing architect has not been provided.

On balance, it is considered that the proposed development is not acceptable and should be refused.

8 RECOMMENDATION

It is recommended that the Minister for Planning pursuant to section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended) and clause 10 of SEPP No 71 – Coastal Protection.

- (A) **refuse consent** to the application for the reasons set out at Tag “A”), and
- (B) authorise the Department to carry out notification of determination

Prepared by

Endorsed:

Denise Robertson
Planner, Urban Assessments

Michael File
Team Leader, Urban Assessments