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<b>JRPP No:</b>	<b>2009HCC003</b>
<b>DA No:</b>	<b>DA 37213/2009</b>
<b>PROPOSED DEVELOPMENT</b>	<b><i>Designated Development - seven new dwellings all split level part 1 &amp; 2 storey on lots 3-11 DP: 25683, 361 - 381 The Scenic Road MACMASTERS BEACH</i></b>
<b>APPLICANT:</b>	<b>Coastplan Consulting - Erina</b>
<b>REPORT BY:</b>	<b>Gosford City Council</b>
<b>CONTACT:</b>	<b>Fred Dobbs</b>

## Assessment Report and Recommendation

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*The following item is defined as a planning matter pursuant to the Local Government Act, 1993 & Environmental Planning & Assessment Act, 1979.*

### EXECUTIVE SUMMARY

#### Reason for Referral to Joint Regional Planning Panel (JRPP)

The proposal is designated development under Clause 13B(1)(e) of SEPP (Major Projects) Amendment (Joint regional Planning Panels) 2009.

#### Assessing Officer

F W Dobbs

#### Reviewing By

Independent Development & Environment Panel (IDEP)  
Director Environment and Planning  
General Manager

#### Date Application Received

20/08/2009

#### Proposal

Designated Development - seven new dwellings all split level part 1 & 2 storey on lots 3-11

#### Zone

Conservation 7(a)-IDO122

#### Area

1.726ha

#### City Vision 2025

Although not a statutory Plan, the proposal is consistent with the City Vision.

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## **Public Submissions**

Three (3)

## **Pre-DA Meeting**

Not Held.

## **Relevant Statutory Provisions**

- 1 Environmental Planning & Assessment Act, 1979 – Section 79C
- 2 Local Government Act 1993 – Section 89
- 3 Rural Fires Act 1997
- 4 SEPP 71 - Coastal Protection
- 5 IDO 122 - Clauses 5 and 22
- 6 DCP 89 - Scenic Quality
- 7 DCP 106 - Controls for Site Waste Management
- 8 DCP 128 - Public Notification of Development Applications
- 9 DCP 155 - Single Dwellings and Ancillary Structures
- 10 DCP 159 - Character
- 11 DCP 165 - Water Cycle Management

## **Key Issues**

- 1 Interim Development Order No 122 - Character and Objectives of Zone
- 2 Climate change and sea level rise
- 3 SEPP 71 - Coastal Protection
- 4 Bushfire Issues / Comments from Rural Fire Service
- 5 Environmental Issues / Comments from Councils Environment Officer
- 6 Tree Removal / Comments from Council's Tree Management Officer
- 7 Effluent Disposal / Comments from Councils Technical Services Officer - Waste Section
- 8 Deferred Commencement Consent
- 9 Public Submissions

## **Recommendation**

Deferred Commencement

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## **REPORT**

### **The Site**

The site is described as Lots 3 - 11, DP 25683, The Scenic Rd, MacMasters Beach. The site is located on the western side of The Scenic Rd Macmasters Beach approximately 200m south of the intersection of Scenic Rd and Graham Drive. That part of the site where the seven (7) dwellings are proposed to be located has a slope of approximately 9 degrees. The residue being the remainder of proposed Lot 100 falls away from the road to the north at a slope of approximately 18 degrees. The site contains vegetation including a number of trees of which 25 have been proposed for removal to facilitate construction of the dwellings.

### **Background**

DA 35374/2008 being a proposed boundary adjustment was approved by Council's Independent Development & Environment Panel (IDEP) on 23 July 2009. This application

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reduces the number of lots from nine (9) to seven (7). The Subdivision Certificate for this consent has not yet been registered at the Land Titles Office. This proposed subdivision was approved by Council under the provision of Clause 20(1)(b) of IDO 122 which permits subdivision for the purpose of *"making an adjustment to a boundary between allotments, being an adjustment that does not involve the creation of any additional allotment."*

The following table represents the new lots as approved under DA 35374/2008:

Proposed Lot	Area
7	670.3m <sup>2</sup>
8	714.5m <sup>2</sup>
102	704.0m <sup>2</sup>
100	1.3ha
101	704.0m <sup>2</sup>
10	784.1m <sup>2</sup>
11	682.9m <sup>2</sup>

### **The Proposal**

The proposal is to construct one dwelling house on each of the proposed new lots approved under DA 35374/2008. It is also proposed to construct a ROC to lots 7, 8 and proposed lot 102 to improve sight distance and provide suitable access to those lots.

### **Assessment**

This application has been assessed using the heads of consideration specified under Section 79C of the Environmental Planning & Assessment Act 1979, Council policies and adopted Management Plans. The assessment supports approval of the application and has identified the following key issues which are elaborated upon for Council's information.

### **Interim Development Order 122**

#### **a Objectives Of Zone**

Clause 5(3) of Interim Development Order No 122 stipulates that consent must not be granted for development of land within the prescribed zone, unless the objectives of the zone have been taken into consideration in conjunction with the objectives of the Local Government Act 1993, pertaining to Ecologically Sustainable Development.

In this instance, it is considered that the proposal is consistent with the stated objectives of the Conservation 7(a)-IDO122 Zone as well as being consistent with the principles of Ecologically Sustainable Development, as specified within the Local Government Act 1993.

#### **b Character**

Clause 5(4) of Interim Development Order No 122 stipulates that the Council must not grant consent for development unless it has taken into consideration the character of the development site and the surrounding area, where, for the purpose of this provision, character means the qualities that distinguish each area and the individual properties located within that area.

The site is located within the MacMasters Beach: Scenic Buffers character locality of DCP 159 - Character. The main attributes of desired character as they relate to the proposed development are as follows:

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1. *These should remain rural-residential buffers where the scenically-distinctive semi-rural and natural qualities of prominent backdrops to Gosford City's major roads and tourist routes are preserved by appropriate very-low density residential developments associated with low impact rural activities, and by small-scale businesses or community and educational facilities that have a modest impact on semi-rural or natural scenic qualities plus the amenity enjoyed by surrounding properties.*

Comment

The proposal will create seven (7) adjoining dwellings on residential sized allotments within the 7(a) zone. The locality consists of lots of similar size or larger than the lots that are part of this application. Bouddi National Park is located opposite the site and with the exception of one privately owned lot the smaller lots directly opposite the site are part of Bouddi National Park.

Generally the floor levels of the proposed dwellings are approximately 3 metres below the level of the road. The proposed dwellings will therefore be only partially visible to passing traffic. The proposed dwellings are sufficiently set back from the front boundary to have minimal impact on the streetscape and have a varied architectural appearances and external finishes.

2. *Retain natural slopes and prevent further fragmentation of the tree canopy in order to maintain habitat values and informal scenic characters of hillside or valley properties, plus meandering roads with unformed verges. Along creeks, ridges, slopes or road frontages, conserve all mature bushland remnants that provide scenically-prominent backdrops visible from any road or nearby property. Limit intrusion of structures upon their landscape setting by concentrating new buildings and pavements in existing clearings. Use low-impact construction such as suspended floors and decks rather than extensive cut-and-fill, particularly on elevated slopes or near bushland.*

Comment

The proposal involves some excavation works to construct building platforms and vegetation removal for dwellings, APZ's for bushfire protection, access and services. Both Council's Environment Officer and Tree Management Officer agree the impact of the excavation works and vegetation is insufficient to warrant refusal of the application and can be carried out in a manner that complies with the zone objectives.

3. *In areas that are defined as bushfire prone, hazard must not be increased by inappropriate new plantings or structures. Minimise the extent of cleared asset protection zones by fire resistant siting, design and construction for all new structures plus effective management of gardens. The ideal compromise between desired scenic quality and hazard-reduction would limit clearing to the understorey plus thinning of the canopy to establish breaks between existing trees.*

Comment

The RFS have no objection to the proposal and have required compliance with the recommendations of the submitted bushfire report.

4. *Maintain the informal character of existing semi-rural hillsides by avoiding tall retaining walls, extensive terraces or broad driveways that would be visible from any road or nearby property, and provide boundary fences that are see-through such as traditional post-and-rail designs. Surround all buildings with extensive garden setbacks, planted with new trees and*

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*shrubs that are predominantly indigenous to complement the established canopy. Noxious or environmental weeds must not be planted, and existing infestations should be controlled.*

Comment

Construction of tall retaining walls has been avoided by stepped design of the dwellings down the site. Front boundary fences are not proposed therefore an open streetscape will be maintained.

5. *In order to minimise their scale and bulk, all new structures that would be visible from a road or nearby property should reflect the modest character and simple articulation of traditional farm buildings. For example, divide floorspace into a series of linked pavilion structures or wings of rooms that are surrounded by landscaped courtyards, and preferably, provide parking in carports or separate garages. Roofs should be simple hips or gables without elaborate articulation, gently-pitched to minimise the height of ridges and flanked by wide eaves or extensive verandahs to disguise the scale of exterior walls. (In bushfire prone areas, verandahs, roofs and suspended floors must be screened to prevent the entry of sparks and flying embers.)*

Comment

The proposed dwellings are of modest design and size and are similar to a number of other dwellings recently constructed along The Scenic Rd over the past several years. The dwellings contain elements including balconies, pitched roofs, hips or gables and have no elaborate articulation (as required). The dwellings will appear as single storey from the road frontage as the 2 storey sections of all dwellings are at the rear. The recommendation contained within the bushfire report has been conditioned as part of the consent as required by the Rural Fire Service.

6. *Disguise the scale of facades that are visible from the street by incorporating extensive windows and verandahs, some painted finishes rather than expanses of plain masonry, and avoid wide garages that would visually-dominate any frontage. Ensure that outbuildings are compatible with the scale and design of their associated dwelling, particularly by using a similar roof pitch and wide eaves. Any commercial signs should be limited in size and number.*

Comment

The proposal utilizes extensive window and verandah areas. Due to the level below the road each dwelling will be only partially visible from the roadway.

Generally the proposal consists of a total of seven (7) modest dwellings of a size and with external finishes similar to a number of recently constructed dwellings in the locality. The excavation and vegetation removal required can be carried out in a manner that is compliant with the zone objectives. In this instance, the proposal does not detract from the character of the immediate locality.

c Common Ownership - Clause 22 - Designated Development

All the existing lots were held in the same ownership on 18 February 1977. Under the provisions of Clause 22 of IDO 122, the land therefore has one building entitlement subject to consolidation of the lots unless the application is submitted as a designated development for a dwelling house on each lot. Notwithstanding that Council has recently approved a subdivision of the land under the provisions of Clause 20 of IDO 122 as a boundary realignment, the provisions of Clause 22(2)(b) of IDO 122 require any application for more than one (1) dwelling

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house on the land to be submitted as a designated development. The Joint Regional Planning Panel (JRPP) is the responsible authority for approval of all designated development.

### **Draft Gosford Local Environmental Plan 2009**

The application has been assessed under the provisions of Draft Gosford Local Environmental Plan 2009 in respect to zoning, development standards and special provisions. The Draft Plan proposes to remove the common ownership provisions for 7(a) zoned land. A dwelling will be permissible with consent on each lot. The assessment concluded the proposal is consistent with the Draft Plan.

### **Climate change and sea level rise**

Climate change and sea level rise have been considered in the assessment of this application.

Climate change and sea level rise will be felt through:

- increases in intensity and frequency of storms, storm surges and coastal flooding;
- increased salinity of rivers, bays and coastal aquifers resulting from saline intrusion;
- increased coastal erosion;
- inundation of low-lying coastal communities and critical infrastructure;
- loss of important mangroves and other wetlands (the exact response will depend on the balance between sedimentation and sea level change); and
- impacts on marine ecosystems.

Internationally there is a lack of knowledge on the specifics of climate change and the likely impact it will have on the subject development. Government action may mitigate the impact of climate change and the question of sea-level rise may be able to be addressed through the construction of containment works or through Council's policies that may be developed over time.

In the absence of any detailed information at the present however, refusal of this application is not warranted.

### **SEPP 71**

The provisions of State Environmental Planning Policy (SEPP) No 71- Coastal Protection requires Council consider the Aims and Objectives of the SEPP together with the matters for consideration listed in Clause 8 of the SEPP when determining an application within the Coastal Zone. The Coastal Zone is an area defined on maps issued by the Department of Planning NSW. The subject property falls within the Coastal Zone.

The Aims and Objectives and the matters listed under Clause 8 have been considered and the application complies with the provisions of the SEPP.

### **Comments from Rural Fire Service (RFS)**

The site is located within a bushfire prone area on Council's bushfire maps therefore the application was referred to the RFS under the provisions of s79BA of the Environmental Planning & Assessment Act 1979. The RFS have recommended the following condition:

"Apply recommendations contained in the Bushfire Assessment Report dated 1.11.08 No B08816/1 and the Bushfire Management Plan November 2008 Ref B08902 FMP.

**(Refer condition C7.1)**

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## **Environmental Issues / Comments from Councils Environment Officer**

### Flora and Fauna

Flora and fauna surveys have recorded the Little Bentwing Bat on the site. Three other threatened species have been suspected including the Red Crowned Toadlet, Yellow Bellied Sheath-tail Bat and the Squirrel Glider. The Squirrel Glider was later positively identified as a Sugar Glider. Section 5a assessments were undertaken on these species as well as other species likely to occur in the locality.

The site has been mapped by Bell (2009) as containing Lowland Rainforest which is also listed as an endangered ecological community. This community occurs on the northern portion of Lot 100 and will be managed via a Vegetation Management Plan that is interrelated with a Fuel Management Plan ensuring the long term structural integrity of the rainforest vegetation and threatened fauna habitat. This has been included as a condition of consent.

A total of 15 hollow bearing trees were recorded by Andrews Neil (2006) within the development areas. These hollows were identified as relatively small in size and limited primarily to small bat species. It was considered that the hollows were not deemed suitable in size to accommodate Yellow Bellied Gliders or threatened owl species. Nevertheless to reduce any impacts to possible bats utilising these hollows a condition of consent has been included for their relocation.

The habitat connectivity will be slightly reduced along this portion of the Scenic Road however given the dense canopy cover between Bouddi National Park and private lands in the immediate vicinity, the reduced canopy in this area is not considered a significant impact. It should be noted that the vegetation in the north-eastern portion of Lot 100 will be retained and maintains its corridor qualities.

The outcomes of the Seven Part Tests of Significance concluded that the proposed development is unlikely to lead to a significant impact upon known/potential threatened species, populations, endangered ecological communities or their habitats. This environmental assessment considered that the proposed development will not result in a significant impact that warrants a Species Impact Statement.

### Rainforest Policy

The site contains rainforest vegetation based upon the presence of key indicator rainforest species listed in Council's Rainforest Policy. The objectives of the Policy have been considered and the following comments are provided in this regard:

- (a) Bushfire protection measures will not result in the removal or modification of rainforest vegetation. To ensure this vegetation is adequately protected a condition of consent has been recommended ensuring that this vegetation is managed under a Vegetation Management Plan that is interrelated with a Fuel Management Plan.
- (b) Lengthy discussions have taken place with the applicant resulting in the proposal being amended with respect to effluent disposal to ensure impacts upon the intermittent watercourse and rainforest vegetation are minimised. It is now proposed to locate the effluent disposal areas beyond the 50 m rainforest buffer and as far as practical from the rainforest vegetation to the eastern extremities of Lot 100. This also has been recommended as a condition of consent.

### Bushfire Assessment

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The building footprints provide adequate separation for bushfire purposes from Bouddi National Park (Australian Bushfire Protection Planners, October 2008). Whilst the Bushfire Assessment has prescribed asset protection zones, vegetation on the site will be managed in accordance with a Fuel Management Plan which will provide bushfire protection measures to Lots 7, 8, 11, 12, 100, 101 & 102. The Rural Fire Service raises no objection to the proposal subject to implementation of the recommendations contained in the Bushfire Management Plan (November 2009).

A condition of consent has been recommended to ensure that the Fuel Management Plan is interrelated to the Bushland Management Plan and provide specific measures for the management of vegetated areas and maintenance of combustible ground fuel levels within Lot 100.

**(Refer conditions Aiv and B2.7)**

#### Tree Loss

It is proposed to remove 25 trees in total. Of these trees 16 are within the building envelopes and the remaining 9 are unsuitable for retention by the as identified by the Arborist. As tree removal will occur upon each dwelling house receiving a Construction Certificate approval, it is highly unlikely all 25 trees will be removed at the same time. This environmental assessment agrees with the tree assessment recommendations and considers that the proposed development will not result in significant impact in respect to tree loss. (Refer to 'Flora and Fauna' for an assessment of tree hollows).

#### Stormwater

The Stormwater Management Plan proposes to dispose of stormwater from Lot 7, 8 and 102 via interallotment drainage and anti scour protection where the drainage line connects to the intermittent watercourse.

It not expected that stormwater will have a significant impact upon the intermittent water course or threatened species habitat however it is recommended that the Vegetation Management Plan address the placement of the interallotment drainage in light of Red Crowned Toadlet habitat. This has been included as a condition of consent. **(Refer condition Aiv)**

Stormwater run-on to the effluent disposal areas will be mitigated by the construction of upslope diversion berms, diversion drains, inlet pits, stormwater pipes and dispersion trenches or interallotment drainage. Water tanks for the collection of stormwater are to be located outside the area dedicated for on site effluent disposal. These issues have been addressed in the Stormwater Management Plan prepared by Coastplan Consulting and included as conditions of consent. **(Refer condition Aiv)**

#### Effluent Disposal

It was originally proposed to dispose of effluent for each lot within a common area on Lot 100. During meetings with the applicant, it was conveyed that this was not acceptable as the disposal area is within 50m of a watercourse, 100m of a dam and rainforest vegetation listed as an endangered ecological community.

As a result the proposed location of onsite effluent disposal was amended. The current location of effluent disposal area will result in positive environmental outcomes compared to the original proposal in that the sensitive environmental receptors will not be significantly impacted upon.

Each disposal area has been designed to manage predicted hydraulic and nutrient loading without adversely impacting upon human health or the environment. With this in mind, Lot 102



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and 8 are to be restricted to a three bedroom dwelling house and an area on Lot 100 will be burdened with an easement to accommodate the shortfall of land required to irrigate effluent from Lots 10, 11, 101 and 102. **(Refer condition Aiv)**

The infiltration of effluent has been taken into account in the analysis of risks in the Geotechnical Assessment. It was concluded that the disposal of effluent can be undertaken on the site while maintaining an acceptable risk of instability for the proposed residences.

#### Cut and Fill

Environmental Consultants Whitehead & Associates Pty Ltd indicate that if property owners would like the effluent disposal area terraced then small retaining structures would be suitable. If the retaining structures are less than one metre in height then development consent would not be required and could be incorporated in a landscape design where desired by individual property owners.

The Geotechnical Assessment considered that the proposed development may proceed provided the design, construction and maintenance recommendations present in the report are adopted and maintained. Implementation of this recommendation has been included as a condition of consent.

**(Refer condition B4.16)**

#### **Comments from Council's Tree Management Officer**

The following comments are made in relation to the application as an opinion by Council's Tree Assessment Officer of the effect the proposal may have on existing trees.

*"The Arboricultural Impact Assessment by R Kingdom 27/10/09 has been assessed and found to be satisfactory. All existing trees near the proposed works have been located and identified.*

*Within the vicinity of the proposed development, 25 trees have been nominated for removal and 28 for retention. Of the 25 trees nominated for removal, 16 are in the areas of building envelopes or roadway, and 9 fail the consultant's visual tree assessment (VTA), which identifies trees outside building areas unsuitable for retention.*

*As discussed, no trees are to be removed for the approval of this application. Tree removal is to only occur with the issue of individual Construction Certificates. This prevents the impact of all trees being removed at one time and will take into consideration individual dwelling designs as they are submitted. Tree protection recommendations within the report will address service installations and future dwelling construction."*

**(Refer Conditions B2.9 & 3.10)**

#### **Comments from Council's Senior Development Engineer**

Council's Development Engineer provides the following comments regarding relevant issues:

#### Traffic and Access

*The posted speed limit is 60km/h*

*The approved DA 35374/08 for a Proposed Boundary Adjustment has been conditioned to upgrade the access from The Scenic Rd to proposed Lots 100, 101 and 102. The upgrading includes works to improve the sight distance and sight lines. Lots 10 & 11 have suitable sight distance and sight lines.*

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*This application proposes to use the access cross over for DA 35374 to access Lot 7 & 8 and proposed Lot 102. It will be recommended that DA 35374 be completed prior to or concurrently with this DA consent. (Refer condition Aii).*

#### Stormwater

*It is proposed to install a minimum 10,000 l tank and an infiltration trench with each dwelling. The overflow from the individual infiltration trenches will "percolate" over the "undevelopable" area of proposed Lot 100. This proposal would be preferable to a formalised interallotment drainage system which would concentrate the stormwater discharge from 7 houses to one point (which would be more difficult to control within the existing terrain).*

*An inter allotment stormwater drainage system is to be constructed from proposed Lots 7, 8 & 102 to the existing watercourse to control the stormwater run off from the proposed ROA.*

#### Water and Sewer

*W & S have advised:*

- 1) Sewer is not available in this area.*
- 2) Reticulated water is available to the land.*
- 3) Section 307 certificate is required.*
- 4) No objection subject to DA 35374 being completed prior to or concurrently with this DA consent. (Refer condition Aii)*

#### **Effluent Disposal / Comments from Councils Waste Section**

Council's Waste Management Assessment Officer has indicated that there is no objection to disposal of liquid waste as proposed via on site sewer management systems on each lot subject to a number of conditions regarding bushfire management, effluent disposal, number of bedrooms in each dwelling and stormwater management. Appropriate conditions regarding these issues have been included in the consent.

**(Refer conditions Aiv and B2.8 & 5.14)**

#### **Modifications required to DA 35374/2008 to facilitate effluent disposal**

The subdivision layout approved under DA35374/2008 requires that part of the effluent disposal areas for proposed Lots 10, 11, 101 and 102 be located on the residue proposed Lot 100. This would necessitate creation of a s88B Instrument to require a cumbersome restriction on the title of the relevant lots to create the necessary benefits and burdens to the relevant lots regarding location of the effluent disposal areas for each on site sewer management (OSSM) system.

Due to the cumbersome nature of such an arrangement, a better alternative would be the creation of an amended subdivision layout to facilitate the location of the required effluent disposal areas within the boundaries of each lot.

S80A(1)(b) of the Environmental Planning & Assessment Act 1979 facilitates approval of an amended subdivision layout to that approved under DA 35374/2008. The amended layout would allow for the creation of effluent disposal areas associated with each OSSM system for the individual dwellings within the property boundaries of each lot. As an amended subdivision layout plan is not available at time of determination, a deferred commencement condition is included requiring the submission of an amended subdivision plan to that approved under DA 35374/2008. The amended plan will be required to provide regular shaped allotments and allow the required effluent disposal areas for each OSSM system for the individual dwellings to be fully located within each individual lot. The amended plan will be required to be approved by

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both by Council's Senior Town Planner and Waste Management Officer. The condition of DA 35374/2008 that is to be modified is condition 1(a) which is currently worded as follows:

- 1(a) Development being generally in accordance with plan(s) numbered DWG 13657 dated Nov 2003, 1 sheet, submitted by Coastplan Consulting, drawn by Bissett & Wright, as amended in red, or where modified by any conditions of this consent.

It is therefore proposed that the above condition be amended as follows:

- 1(a) Development being generally in accordance with an amended plan to be submitted to Council for approval by Councils Senior Town Planner and Waste Management Officer. The amended plan is to provide regular shaped allotments and allow the creation of the required effluent disposal area for each on site sewer management system for each dwelling wholly within each individual lot. **(Refer recommendation A).**

### **Deferred Commencement Consent**

A deferred commencement consent will be required for the following reasons:

- i To amend the approved subdivision application (DA 35374/2008) under S80A(1)(b) of the Environmental Planning and Assessment Act 1979 by approval of a plan amending the approved subdivision layout to enable creation of regular shaped lots and allowing each of the effluent disposal areas for each dwelling to be located wholly within each individual lot.
- ii The registration of the plan of subdivision approved as DA 35374/2008 and evidence submitted to Council for verification prior to activation of consent.
- iii The construction of the Right of Carriageway (ROC) over lots 7, 8 and proposed lot 102 (DA 35374) to ensure suitable access for future dwellings.
- iv The Deposited Plan must be amended to include a Section 88B Instrument under the Conveyancing Act 1919 for the following restrictive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Wherever possible, the extent of land affected by these covenants shall be defined by bearings and distances shown on the plan of subdivision. Contact Council for the wording of the covenants.
  - a Bushfire Management Plan - A Restriction as to User shall be created over Lot 100 for the ongoing management of the fire protection zones outlined in the Australian Bushfire Protection Planners Bushfire Protection Assessment (October 2008). A Fuel Management Plan shall be prepared and approved by Council which outlines the prescription / protocols that will ensure the ongoing management of the asset protection zones within Lot 100.

The Fuel Management Plan shall incorporate recommendations of the Bushfire Assessment Report (Australian Bushfire Protection Planners October 2008) and prepared in consultation with the Vegetation Management Plan. The Fuel Management Plan shall provide specific measures for the management and maintenance of combustible ground fuel levels within Lot 100 to ensure the long term structural integrity of the rainforest vegetation and threatened fauna habitat. The riparian corridor measured 10 metres from the top of the bank shall not be managed for bushfire purposes. To minimise the potential for erosion and sedimentation, fuel management within the asset protection zones shall only remove the aerial parts of plants ensuring that roots remain within the soil profile. Hand raking of ground fuel in steep areas is recommended.

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- b Effluent Disposal Plan - To create a Restriction as to User over proposed Lots 7, 8, 10, 11, 101, 100 and 102 containing on-site effluent disposal areas restricting any alteration to such a facility or the erection of any structure or obstruction over the facility.
  - c Stormwater Management Plan - To create a Restriction as to User over proposed Lots 7, 8, 10, 11, 101, 100 and 102 prohibiting stormwater runoff from entering effluent disposal areas as shown on the Layout Plan and Upslope Diversion Drain Plan within the Stormwater Management Plan as prepared by Coastplan Consulting dated 10 September 2009.

The Restriction as to User shall include the drainage lines, diversion berms, diversion drains, inlet pits and dispersion trenches within Lot 100 to the benefit of Lots 101, 10 and 11 as shown on the Layout Plan and Stormwater Management Plan prepared by Coastplan Consulting dated 10 September 2009.

The Restriction as to User shall be created over the interallotment drainage lines and anti scour protection located at the intermittent watercourse within Lot 100 to the benefit of Lots 7, 8 and 102 as shown on the Layout Plan and Stormwater Management Plan prepared by Coastplan Consulting dated 10 September 2009.

- d Number of Bedrooms in Each Dwelling - To create a Restriction as to User over proposed Lots 8 and 102 restricting each dwelling to 3 bedrooms and over proposed lots 7, 10, 11, 101 and 100 restricting each dwelling to 4 bedrooms. Note rooms such as theatre rooms, studies and rooms capable of being easily adapted for bedroom usage will be regarded as bedrooms for the purpose of this restriction.
- e Flora & Fauna - To create a 'Restriction on Use' pursuant to Section 88B and 'Public Positive Covenant' 88E of the *Conveyancing Act 1919*. These instruments must require the land to be managed under an approved Vegetation Management Plan for the conservation of threatened species habitat, riparian vegetation and rainforest vegetation listed as an endangered ecological community. The public positive covenant must be created to require the implementation of the Vegetation Management Plan.

The public positive covenant must permit Council or its nominee to enter and inspect the site and carry out any works required under the Vegetation Management Plan, at the owner's cost, if the owner fails to implement and maintain the site in accordance with the Vegetation Management Plan as amended and approved by Council.

The public positive covenant shall be prepared by Council's Solicitor at the cost of the registered proprietor. The authority empowered to release, vary or modify the Restriction is Gosford City Council.

The above condition regarding the s88B Instrument will involve the applicant contacting Council's legal section for the wording of the covenants which will ensure that subsequent owners of each lot are aware of their legal responsibilities regarding the relevant issues.

**(Refer condition Aiv)**

## **Public Submissions**

Two (2) public submissions were received in relation to the application. Those issues associated with the key issues have been addressed in the above report. The remaining issues

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pertaining to various concerns were addressed in the assessment of the application pursuant to the heads of consideration contained within Section 79C of the Environmental Planning and Assessment Act 1979.

A summary of the submissions is detailed hereunder.

**1 Tree Removal. Loss of habitat for flora & fauna**

Comment

The issue of tree removal has been assessed by Council's Tree Management Officer who notes that 25 trees are proposed for removal and of those 16 are in the areas of building envelopes or roadway and 9 fail the consultant's visual tree assessment (VTA), which identifies trees outside building areas unsuitable for retention. Tree removal is to only occur with the issue of individual Construction Certificates. This prevents the impact of all trees being removed at one time and will take into consideration individual dwelling designs as they are submitted. Tree protection recommendations within the report will address service installations and future dwelling construction.

**(Refer Conditions B2.9 & 3.10)**

Council's Environment Officer has assessed relevant environmental issues as outlined above and has no objection to the proposal subject to specific conditions.

**(Refer conditions Aiv and B4.10 to 4.15)**

**2 The proposal is contrary to the Plan of Management for Cochrone Lagoon which states there should be no increase in density of landuse within the catchment of the lagoon.**

Comment

The site consists of 9 existing lots. The proposal is to construct seven (7) dwellings which is a density less than one (1) dwelling house per lot.

**3 Bushfire Issues - No effective APZ's and access. The proposal does not meet the requirements for Planning for Bushfire Protection.**

Comment

Lots 7, 8 and 102 will use the access point established and approved under the consent for the boundary realignment. Council's Senior Development Engineer is satisfied regarding vehicular access. On the advice of the RFS the proposal has been conditioned to comply with the recommendations of the submitted bushfire report which addresses all relevant bushfire issues.

**(Refer condition B7.1)**

**4 Pump Out of sewerage will encourage breaches to avoid costly removal of effluent.**

Comment

Council's Waste Section accept "pump out" as a means of disposing of effluent as a last resort only, usually on existing dwellings with failed 'onsite' systems. The applicant has been required to submit a design for an onsite disposal system designed by an appropriately qualified geo-tech engineer or similar. The applicant has submitted the required Report and it has been established that on-site disposal of effluent is feasible.

**(Refer Conditions Aiv B 2.8 and 5.14)**

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## 5 Out of character and overdevelopment. High visibility from the road

### Comment

An assessment of character above indicates the proposal will not detract from the character of the locality to the degree to warrant refusal of the application. The development will present as a small cluster of seven (7) dwellings, partially visible from the roadway, similar in many ways to a number of other locations along The Scenic Rd.

### Conclusion

Following is a summary of the relevant issues:

- 1 **Character** - The allotment layout is similar to that generally in the locality. The submitted streetscape plan indicates that when constructed, the dwellings will appear as a number of modest single storey dwellings similar in size and external appearance to other residential enclaves in the locality along The Scenic Rd. Due to the topography of the site and the fall away from the road the proposed dwellings will be only partially visible from the road. Although some excavation work and tree removal will be required, both Council's Tree Management Officer and Environment officer agree that such impacts are within acceptable limits with regard to the Conservation zoning of the site and the development entitlements under the zoning.
- 2 **Draft Local Environment Plan 2009** - The proposal complies with the requirement of Draft LEP 2009.
- 3 **Bushfire** - The Rural Fire Service have no objection to the proposal and a condition has been included requiring compliance with the recommendations contained within the submitted bushfire report.
- 4 **Environmental and Tree Management Issues** – Council's Environment Officer and Tree Management Officer have assessed all relevant issues regarding flora and fauna, Council's Rainforest Policy, bushfire, tree loss, stormwater,, effluent disposal and cut and fill and have concluded that there is no objection to the proposal subject to relevant conditioning as outlined above.
- 5 **Engineering Issues** – Council's Senior Development Engineer has considered relevant engineering issues in relation top access, stormwater and water/sewer and has no objection to the proposal subject to relevant conditions which are included in the consent as outlined above.
- 6 **Effluent Disposal and Stormwater Issues** – This application has taken until this point to resolve mainly due to the submission of the original application proposing a "pump out" system of effluent disposal. Council's Waste Section advise that "pump out" systems are now only approved to replace existing on-site systems that have failed and where no other suitable alternative is available. The applicant was required to submit details to support on site sewer management and the relevant reports, documentation and design to acceptable standard have only recently been provided to Council. Relevant liquid waste and stormwater issues have now been resolved. The applicant has demonstrated that on site sewer management systems can be provided to each dwelling with suitable area being available on each site for on-site disposal of effluent. It has been further demonstrated that stormwater which could cause system failure can be prevented from entering the effluent disposal areas and that there are no geotechnical issues. Appropriate conditions have been included in the consent regarding these issues as outlined above.

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- 7 **Deferred Commencement Consent** - will be required to enable approval of an amended subdivision layout for the approved DA 35374/2008 to facilitate creation of effluent disposal areas within each individual lot, registration of the Subdivision Certificate approved as DA 35374/2008 ensuring each dwelling will be wholly sited within its own separate allotment, that suitable access is provided to each lot and the relevant s88B Instrument is created in relation to the required Bushland Management Plan, Effluent Disposal Plan, Stormwater Management Plan, number of bedrooms in each dwelling and Flora and Fauna requirements.
- 8 **Public Submissions** - The application was advertised / notified as a Designated Development for a period of thirty days from 2 September 2009 to 2 October 2009. Two submissions were received which have been considered above under Public Submissions. Relevant issues have been resolved by the inclusion of conditions of consent where necessary.

With appropriate conditioning as outlined above approval will achieve the best environmental outcome when weighed against the development entitlements of the property. All relevant matters under Section 79C of the EP & A Act 1979, Section 89 of the Local Government Act, the objectives of the zoning and the principles of ecologically sustainable development have been considered and approval is recommended.

<b>Attachments</b>	1	Location Plan (Current Lot Layout)
	2	Aerial Photograph
	3	Zoning Plan IDO 122
	4	Draft LEP Zoning Plan
	5	Approved Lot Layout and Preferred Effluent Management Area
	6	Cross Section: Upslope Diversion Drain
	7	Site Plan Showing Preferred Effluent Management Area
	8	Streetscape View Proposed Dwellings
	9	Plans (Subdivision Layout Plan and Dwelling Plans)

**Tabled Items:** Nil

## **RECOMMENDATION**

- A The Hunter and Central Coast Joint Regional Planning Panel pursuant to s80A1(b) of the NSW Environmental Planning & Assessment Act 1979 modify D.A. 35374/2008 as follows:

Replace condition 1(a) of the consent with the following condition:

- 1(a) Development being generally in accordance with an amended plan to be submitted to Council for approval by Councils Senior Town Planner and Waste Management Officer. The amended plan is to provide regular shaped allotments and allow the creation of the required effluent disposal area for each on site sewer management system for each dwelling wholly within each individual lot.
- B In accordance with Section 80(3) of the Environmental Planning and Assessment Act, 1979, The Joint Regional Planning Panel grant a deferred commencement consent to Development Application No. 37213 for Designated Development - seven new dwellings all split level Part 1 and 2 storeys on Lots: 3-11 DP: 25683, 361-381 The Scenic Road MACMASTERS BEACH 2251 subject to the following conditions being met to the satisfaction of Council within twelve (12) months from the date of this consent.

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- i Submission to Council of an amended subdivision layout plan for DA 35374/2008 for approval by Councils Senior Town Planner and Waste Management Officer. The amended plan is to provide regular shaped allotments and allow the creation of the required effluent disposal area for each on site sewer management system for each dwelling wholly within each individual lot.
  - ii The registration of the plan of subdivision approved as DA 35374/2008 and evidence submitted to Council for verification prior to activation of consent.
  - iii The construction of the Right of Carriageway (ROC) over lots 7, 8 and proposed lot 102 (DA 35374) to ensure suitable access for future dwellings.
  - iv The Deposited Plan must be amended to include a Section 88B Instrument under the Conveyancing Act 1919 for the following restrictive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Wherever possible, the extent of land affected by these covenants shall be defined by bearings and distances shown on the plan of subdivision. Contact Council for the wording of the covenants.
    - a Bushfire Management Plan - A Restriction as to User shall be created over Lot 100 for the ongoing management of the fire protection zones outlined in the Australian Bushfire Protection Planners Bushfire Protection Assessment (October 2008). A Fuel Management Plan shall be prepared and approved by Council which outlines the prescription / protocols that will ensure the ongoing management of the asset protection zones within Lot 100.

The Fuel Management Plan shall incorporate recommendations of the Bushfire Assessment Report (Australian Bushfire Protection Planners October 2008) and prepared in consultation with the Vegetation Management Plan. The Fuel Management Plan shall provide specific measures for the management and maintenance of combustible ground fuel levels within Lot 100 to ensure the long term structural integrity of the rainforest vegetation and threatened fauna habitat. The riparian corridor measured 10 metres from the top of the bank shall not be managed for bushfire purposes. To minimise the potential for erosion and sedimentation, fuel management within the asset protection zones shall only remove the aerial parts of plants ensuring that roots remain within the soil profile. Hand raking of ground fuel in steep areas is recommended.

- b Effluent Disposal Plan - To create a Restriction as to User over proposed Lots 7, 8, 10, 11, 101, 100 and 102 containing on-site effluent disposal areas restricting any alteration to such a facility or the erection of any structure or obstruction over the facility. .
- c Stormwater Management Plan - To create a Restriction as to User over proposed Lots 7, 8, 10, 11, 101, 100 and 102 prohibiting stormwater runoff from entering effluent disposal areas as shown on the Layout Plan and Upslope Diversion Drain Plan within the Stormwater Management Plan as prepared by Coastplan Consulting dated 10 September 2009.

The Restriction as to User shall include the drainage lines, diversion berms, diversion drains, inlet pits and dispersion trenches within Lot 100 to the benefit of Lots 101, 10 and 11 as shown on the Layout Plan and Stormwater Management Plan prepared by Coastplan Consulting dated 10 September 2009.



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The Restriction as to User shall be created over the interallotment drainage lines and anti scour protection located at the intermittent watercourse within Lot 100 to the benefit of Lots 7, 8 and 102 as shown on the Layout Plan and Stormwater Management Plan prepared by Coastplan Consulting dated 10 September 2009.

- d Number of Bedrooms in Each Dwelling - To create a Restriction as to User over proposed Lots 8 and 102 restricting each dwelling to 3 bedrooms and over proposed lots 7, 10, 11, 101 and 100 restricting each dwelling to 4 bedrooms. Note rooms such as theatre rooms, studies and rooms capable of being easily adapted for bedroom usage will be regarded as bedrooms for the purpose of this restriction.
- e Flora & Fauna - To create a 'Restriction on Use' pursuant to Section 88B and 'Public Positive Covenant' 88E of the *Conveyancing Act 1919*. These instruments must require the land to be managed under an approved Vegetation Management Plan for the conservation of threatened species habitat, riparian vegetation and rainforest vegetation listed as an endangered ecological community. The public positive covenant must be created to require the implementation of the Vegetation Management Plan.

The public positive covenant must permit Council or its nominee to enter and inspect the site and carry out any works required under the Vegetation Management Plan, at the owner's cost, if the owner fails to implement and maintain the site in accordance with the Vegetation Management Plan as amended and approved by Council.

The public positive covenant shall be prepared by Council's Solicitor at the cost of the registered proprietor. The authority empowered to release, vary or modify the Restriction is Gosford City Council.

- B Upon compliance with the conditions of deferred commencement and written notification by Council, the consent shall become operative subject to the attached conditions.
- C The applicant is advised of Council's decision and of their right to appeal to the Land and Environment Court within 12 months after the date of determination.
- D In accordance with Section 95(1A) of the Environmental Planning & Assessment Act 1979, this consent shall be valid for a period of five (5) years.
- E The objectors be notified of Council's decision.
- F The External Authorities be notified of the Joint Regional Planning Panel decision.

## CONDITIONS

### DEFERRED COMMENCEMENT

- A This consent shall not operate until the following have been satisfied
  - i Submission to Council of an amended subdivision layout plan for DA 35374/2008 for approval by Council's Senior Town Planner and Waste Management Officer. The amended plan is to provide regular shaped allotments and allow the creation of the

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required effluent disposal area for each on site sewer management system for each dwelling wholly within each individual lot.

- ii The registration of the plan of subdivision approved as DA 35374/2008 and evidence submitted to Council for verification prior to activation of consent.
- iii The construction of the Right of Carriageway (ROC) over lots 7, 8 and proposed lot 102 (DA 35374) to ensure suitable access for future dwellings.
- iv The Deposited Plan must be amended to include a Section 88B Instrument under the Conveyancing Act 1919 for the following restrictive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Wherever possible, the extent of land affected by these covenants shall be defined by bearings and distances shown on the plan of subdivision. Contact Council for the wording of the covenants.
  - a Bushfire Management Plan - A Restriction as to User shall be created over Lot 100 for the ongoing management of the fire protection zones outlined in the Australian Bushfire Protection Planners Bushfire Protection Assessment (October 2008). A Fuel Management Plan shall be prepared and approved by Council which outlines the prescription / protocols that will ensure the ongoing management of the asset protection zones within Lot 100.

The Fuel Management Plan shall incorporate recommendations of the Bushfire Assessment Report (Australian Bushfire Protection Planners October 2008) and prepared in consultation with the Vegetation Management Plan. The Fuel Management Plan shall provide specific measures for the management and maintenance of combustible ground fuel levels within Lot 100 to ensure the long term structural integrity of the rainforest vegetation and threatened fauna habitat. The riparian corridor measured 10 metres from the top of the bank shall not be managed for bushfire purposes. To minimise the potential for erosion and sedimentation, fuel management within the asset protection zones shall only remove the aerial parts of plants ensuring that roots remain within the soil profile. Hand raking of ground fuel in steep areas is recommended.

- b Effluent Disposal Plan - To create a Restriction as to User over proposed Lots 7, 8, 10, 11, 101, 100 and 102 containing on-site effluent disposal areas restricting any alteration to such a facility or the erection of any structure or obstruction over the facility.
- c Stormwater Management Plan - To create a Restriction as to User over proposed Lots 7, 8, 10, 11, 101, 100 and 102 prohibiting stormwater runoff from entering effluent disposal areas as shown on the Layout Plan and Upslope Diversion Drain Plan within the Stormwater Management Plan as prepared by Coastplan Consulting dated 10 September 2009.

The Restriction as to User shall include the drainage lines, diversion berms, diversion drains, inlet pits and dispersion trenches within Lot 100 to the benefit of Lots 101, 10 and 11 as shown on the Layout Plan and Stormwater Management Plan prepared by Coastplan Consulting dated 10 September 2009.

The Restriction as to User shall be created over the interallotment drainage lines and anti scour protection located at the intermittent watercourse within

Lot 100 to the benefit of Lots 7, 8 and 102 as shown on the Layout Plan and Stormwater Management Plan prepared by Coastplan Consulting dated 10 September 2009.

- d Number of Bedrooms in Each Dwelling - To create a Restriction as to User over proposed Lots 8 and 102 restricting each dwelling to 3 bedrooms and over proposed lots 7, 10, 11, 101 and 100 restricting each dwelling to 4 bedrooms. Note bedrooms such as theatre rooms, studies or rooms capable of being easily adapted for bedroom usage are regarded as bedrooms.
- e Flora & Fauna - To create a 'Restriction on Use' pursuant to Section 88B and 'Public Positive Covenant' 88E of the *Conveyancing Act 1919*. These instruments must require the land to be managed under an approved Vegetation Management Plan for the conservation of threatened species habitat, riparian vegetation and rainforest vegetation listed as an endangered ecological community. The public positive covenant must be created to require the implementation of the Vegetation Management Plan.

The public positive covenant must permit Council or its nominee to enter and inspect the site and carry out any works required under the Vegetation Management Plan, at the owner's cost, if the owner fails to implement and maintain the site in accordance with the Vegetation Management Plan as amended and approved by Council.

The public positive covenant shall be prepared by Council's Solicitor at the cost of the registered proprietor. The authority empowered to release, vary or modify the Restriction is Gosford City Council.

Evidence must be produced to the consent authority sufficient to enable it to be satisfied that above conditions have been complied within twelve (12) months of the date of this approval, otherwise this consent will lapse.

- B Upon compliance with the conditions of deferred commencement Council will issue an operative consent (including stamped plans) that is subject to the attached conditions:

## 1. PARAMETERS OF THIS CONSENT

### 1.1 Approved Plans and Supporting Documents

The development shall be implemented substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and to which is affixed a Council stamp "*Development Consent*" unless modified by any following condition.

**Layout Plan by**  
**Preferred Effluent Management Area Plan by**  
**Upslope Diversion Plan by**  
**Architectural Plans by**

**Bissett & Wright Pty Ltd Surveyors**  
**Whitehead & Associates**  
**Whitehead & Associates**  
**Ann Wand**

Drawing	Description	Sheets	Date
DWG13657	Layout Plan	1 Sheet	Nov 2003
DWG13657	Preferred Effluent Management Area	1 Sheet	20 Oct 2010
W & A589DD/1	Upslope Diversion Drain	1 Sheet	18/02/2009

Sept 2008	Proposed Lot 101	Dwelling Plans	1-9	Sept 2008
	Proposed Lot 7	Dwelling Plans	1-9	Sept 2008
	Proposed Lot 10	Dwelling Plans	1-9	Sept 2008
	Proposed Lot 100	Dwelling Plans	1-9	Sept 2008
	Proposed Lot 11	Dwelling Plans	1-9	Sept 2008
	Proposed Lot 8	Dwelling Plans	1-9	Sept 2008
	Proposed Lot 102	Dwelling Plans	1-9	Sept 2008

### Supporting Documentation

Document	Title	Date
6714559	Environmental Impact Statement	January 2009
6714559	Bushfire Protection Assessment	1/11/2008
8746734	Wastewater Management Report	October 2010
8727336	Geotechnical Report	1 Oct 2010
7090232	Arboricultural Impact Assessment	27/10/09

### 1.2 Building Code of Australia

All building works must be carried out in accordance with the Building Code of Australia.

## 2. PRIOR TO ISSUE OF THE CONSTRUCTION CERTIFICATE

- 2.1 No activity is to be carried out on site until a Construction Certificate has been issued. Other than:
  - a Site investigation for the preparation of the construction, and/or
  - b Implementation of environmental protection measures, such as erosion control etc that are required by this consent.
- 2.2 A security deposit of \$3,000.00 must be paid into Council's trust fund prior to the issue of a Construction Certificate. The payment of the security deposit is required to cover the cost of repairing damage to Council's assets that may be caused as a result of the development. The security deposit will be refunded upon the completion of the project if no damage was caused to Council's assets as a result of the development.
- 2.3 A Construction Certificate for the subdivision works within the private property must be issued prior to the commencement of any work.
- 2.4 Engineering plans for the following subdivision works within the private property must be designed by a suitably qualified professional, in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control' prior to the issue of a Construction Certificate.
  - (a) Concrete access ways comprising a minimum 3.0m full width reinforced concrete pavement (SL72 steel fabric, 150mm thick) 150mm integral kerb on the low side, 3% reverse crossfall, drainage (including lot drainage) within all rights of accesses or access handles, or Alternatively,

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- (b) Rural access road comprising a 3m wide bitumen sealed pavement, 0.5m wide shoulders, 3% reverse crossfall, drainage within the right of accesses or access handle.

Nutrient/pollution control measures designed in accordance with Council's DCP165 - Water Cycle Management. A nutrient/pollution control report including an operation and maintenance plan shall accompany the design.

Provision of a stormwater drainage system from all impervious areas within the site to the existing watercourse.

The engineering plans and any associated reports for the above requirements must form part of the Construction Certificate.

- 2.5 A pavement report for works within the private property shall be prepared by a practising Geotechnical Engineer. This report must be submitted with the engineering plans for the internal subdivision works.

The pavement depths must be determined in accordance with Council's specifications and the following traffic loadings:

Name of Street	Traffic Loading (ESAs)
ROA	60,000

- 2.6 Proposed retaining walls, greater than 600mm in height, are to be designed by a practising Structural/Civil Engineer. The plans for the proposed retaining walls shall form part of the Construction Certificate.
- 2.7 Prior to the issue of a Construction Certificate, a Bushland Management Plan is to be submitted to and approved by Certifying Authority for the management and enhancement of vegetated areas and the riparian corridor to ensure the long term structural integrity of the rainforest vegetation and threatened fauna habitat. The Vegetation Management Plan shall also address the placement of the interallotment drainage in light of Red Crowned Toadlet habitat.

The Bushland Management Plan must be prepared by an appropriately qualified professional in consultation with the Fuel Management Plan. The plan must be in accordance with the Australian Association of Bush Regenerators Guidelines or NSW TAFE Bush Regenerators Certificate Course Guidelines. The primary objective of the plan is weed management, regeneration of the native vegetation and supplementary native plantings for the benefit of the local flora and fauna.

- 2.8 Submission of an application under the provisions of Section 68 of the Local Government Act 1993 for a permit to install an on-site sewerage management system. The system is to be designed in accordance with the geotechnical report/waste water report 0698, dated October 2010 and prepared by Whitehead and Associates, Geotechnical report 24364SPrptRevA, dated 1 October 2010 and prepared by Jeffery and Katauskas Pty Ltd and Stormwater Management Plan 4807 dated 10 September 2010 and prepared by Coastplan Consulting, prior to the issue of any construction certificate.
- 2.9 Trees are not to be removed until issue of a Construction Certificate for individual buildings on each of the individual lots. At the time of applying for individual Construction Certificates, only those trees as identified for removal within the Arboricultural Impact Assessment by R Kingdom 27/10/09 and those trees effected by individual dwelling

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designs will be considered for removal. Extracts from that report are to support all individual applications.

- 2.10 Satisfactory arrangements must be made for the provision of water and sewer services to the land. A copy of the Certificate of Compliance under Section 307 of the Water Management Act 2000 must be obtained from the Water Authority (Council) prior to the issue of a Construction Certificate. Contributions may be applicable to the Section 307 Certificate.

### 3. PRIOR TO COMMENCEMENT OF ANY WORKS

- 3.1 A construction certificate for the building work is to be issued and the person having the benefit of the development consent must appoint a principal certifying authority prior to the commencement of any building works.

The principal certifying authority (if not the Council) is to notify Council of their appointment and notify the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work no later than 2 days before the building work commences.

- 3.2 A copy of the stamped approved plans must be kept on site for the duration of site works and be made available upon request to either the Principal Certifying Authority or an officer of the Council.
- 3.3 Site works are not to commence until the sediment control measures have been installed in accordance with the approved plans.
- 3.4 A sign is required to be erected in a prominent position on any work site on which building or demolition work is being carried out. The sign shall indicate:
- a) The name, address and telephone number of the principal certifying authority for the work; and
  - b) The name of the principal contractor and a telephone number at which that person may be contacted outside of working hours; and
  - c) That unauthorised entry to the work site is prohibited.

The sign is to be removed when the work has been completed.

- 3.5 Temporary closet accommodation being provided throughout the course of building operations by means of a chemical closet complying with the requirements of the Department of Environment and Climate Change or temporary connections to Council's sewer where available, such connections to be carried out by a licensed plumber and drainer.
- 3.6 Public access to the construction site is to be prevented, when building work is not in progress or the site is unoccupied.

These prevention measures must be in accordance with the NSW WorkCover publication titled, '*Site Security and Public Access onto Housing Construction Sites*' and installed prior to the commencement of any demolition, excavation or building works and be maintained throughout construction. The use of barbed wire and/or electric fencing is not to form part of the protective fencing to construction sites.

- 3.7 A suitable hoarding or fence is to be erected between the building or site of the proposed building and any public place to prevent any materials from or in connection with the work, falling onto the public place.

If it is intended or proposed to erect the hoarding or fence on the road reserve or public place a separate application made under the *Roads Act 1993* will need to be lodged with Council together with the associated fee.

- 3.8 Separate application for a vehicular access crossing, accompanied by the current fee as prescribed in Council's Schedule of Fees and Charges shall be submitted to Council. The application form can be obtained by contacting Council's Customer Service Staff or visit Council's web site [www.gosford.nsw.gov.au](http://www.gosford.nsw.gov.au)
- 3.9 The developer shall erect a sign in a prominent position prior to the commencement of any construction showing the name and details of the developer, contractor and person/s in charge of the work site including a telephone number/s at which that person/s may be contacted during and after hours and for emergencies arising.
- 3.10 Tree Protection is to comply with points 6.0, 6.1 and 7.0 of the Arboricultural Impact Assessment by R Kingdom 27/10/09.

#### 4. DURING WORKS

- 4.1 Clearing of land, excavation, and/or earthworks, building works, and the delivery of building materials shall be carried out between the following hours:

Mondays to Fridays - 7:00am to 6:00pm

Saturdays - 8:00am to 4:00pm except as noted in Clause 'b'

a No work is permitted on Sundays and Public Holidays

b No work is permitted on:

- Saturdays when a public holiday is adjacent to that weekend.
- Construction industry awarded rostered days off.
- Construction industry shutdown long weekends.

Clause b does not apply to works of a domestic residential nature as below:

- i Minor renovation or refurbishments to single dwelling construction.
- ii Owner occupied renovations or refurbishments to single dwelling construction.
- iii Owner builder construction of single dwelling construction; and/or
- iv Any cottage constructions, single dwellings or housing estates consisting of predominantly unoccupied single dwellings.

- 4.2 Erosion and Siltation control measures must be undertaken and maintained in respect to any part of the land where the natural surface is disturbed or earthworks are carried out. The controls shall comply with Council's Code of Practice of Erosion and Sedimentation Control.
- 4.3 Building materials must not be stored nor construction work carried out on the road reserve unless associated with a separate approval under the *Roads Act 1993*.
- 4.4 Buildings are to be demolished in a safe and systematic manner in accordance with the requirements of Australian Standard *AS 2601-2001 - Demolition of Structures*, and disposed of in an approved manner.
- 4.5 The engineering works within private property that formed part of the Construction Certificate shall be constructed in accordance with Council's 'Civil Construction



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Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control'.

- 4.6 Filling or debris must not be placed within any watercourse or drain.
- 4.7 Arrangements must be made with Energy Australia, Australian Gas Light Company and Telstra for the supply of services concurrent with the engineering work. Arrangements must include any relocation of existing mains and services and dedication of easements for mains and services.
- 4.8 Structures located across any proposed new boundaries are to be demolished and the materials disposed of at an approved site.
- 4.9 Should any Aboriginal objects or artefacts be uncovered during works on the site, all works must cease. The Department of Environment and Climate Change shall be contacted immediately and any directions or requirements complied with.
- 4.10 During works a suitably qualified professional (Ecologist, WIRES Officer) must be located on site to inspect trees to be removed for hollows. Any hollow bearing tree to be removed must be sectionally dismantled and any resident fauna cared for and relocated as appropriate. The hollow section of the tree must be secured to an appropriate sized tree in an alternate location on the site. A constructed nesting box will replace any hollow that was destroyed during works.
- 4.11 To minimize the potential for erosion and sedimentation, fuel management must only remove the aerial parts of plants; roots of all plants must remain so that soil is undisturbed. This constraint will require that this work be undertaken manually in the environmentally sensitive 50m rainforest vegetation buffer on Lot 100.

Erosion and Siltation control measures must be undertaken and maintained in respect to any part of the land where the natural surface is disturbed or earthworks are carried out. The controls shall comply with Council's Code of Practice of Erosion and Sedimentation Control.

- 4.12 Trees to be cleared and not re-used on the site as log habitat, must be chipped and used during landscaping and/or Bushland Management.
- 4.13 All stumps are to be ground out or removed in a manner so as not to damage the trees to be preserved.
- 4.14 Stockpile of soil and other material shall be located away from sensitive environmental receptors within the 50 m rainforest buffer, and if not to be used immediately, must be covered with an appropriate control such as geotextile fabric.
- 4.15 Appropriate measures must be applied to prevent windblown or traffic generated dust.
- 4.16 Implementation of the recommendations contained in the Geotechnical Assessment prepared by Jeffery & Katauska Pty Ltd dated October 2010.

## **5. PRIOR TO ISSUE OF THE OCCUPATION CERTIFICATE**

- 5.1 Application for an Occupation Certificate must be submitted to and approved by the Principal Certifying Authority prior to occupation of the building.



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- 5.2 The premises not being occupied until an occupation certificate has been issued.
- 5.3 The driveways and vehicle manoeuvring areas as shown on the approved plan must be properly constructed, graded, drained and sealed with impervious paving material in accordance with Australian Standard 2890.1-2004 Off Street Parking.
- 5.4 The requirements of the BASIX certificate for development and shown on the approved plans must be complied with prior to the issue of an occupation certificate.
- 5.5 The development shall incorporate a stormwater retention system consisting of either rainwater tanks and/or stormwater tanks (as defined in DCP 165 -Water Cycle Management) with a minimum total capacity of 10 000 litres per dwelling-house, capturing water from at least 90% of the total roof area. The water collected is to be suitably treated and connected to an external tap, all toilet cisterns and cold washing machine tap(s). Overflow from the rainwater tanks and/or stormwater tanks are to be directed by a piped drainage line to an infiltration trench.
- Note:  
Internal stormwater infiltration trench details are to be designed by a practising engineer experienced in hydraulics. The design details are to cater for a 1 in 20 year AEP storm event.
- 5.6 A material or device is to be installed to prevent the build up of flammable material (such as leaf matter) within the roof gutters is to be installed. The material or device must have a flammability index of not greater than 5 when tested in accordance with AS1530.2.
- 5.7 Impervious surface areas including pathways and driveways are to be graded and drained to prevent water run-off affecting adjoining properties.
- 5.8 The resultant material associated with demolition work must be removed from site, prior to the issue of a Occupation Certificate.
- 5.9 Completion of the engineering works required within the development site in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control', prior to the issue of a Subdivision Certificate.
- 5.10 Prior to the issue of an OccupationCertificate the plan of subdivision and section 88B instrument under the Conveyancing Act 1919 must establish the following restrictive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Wherever possible, the extent of land affected by these covenants shall be defined by bearings and distances shown on the plan of subdivision
- a To create a Restriction As To user over all lots containing a nutrient/pollution control facility restricting any alteration to such a facility or the erection of any structure over the facility or the replacement of any obstruction over the facility.
  - b To create an easement to drain water minimum 1.0m wide over the constructed inter allotment drainage system from proposed Lot 102 over proposed Lots 7 & 8 to the existing watercourse (on proposed Lot 100) in favour of proposed Lots 7, 8 & 102.
  - c To prohibit direct vehicular access to and from The Scenic Road in respect to proposed lots 7, 8 & 102.

- d To create a right of access, right of carriageway and an easement for services a minimum 3.0m wide over the constructed access over proposed Lots 8, 100 & 102 to benefit proposed Lots 7, 8 & 102.

5.11 An approval to operate the on-site sewage management system is to be issued by Council's Waste and Emergency Services prior to the issue of an Interim or Final Occupation Certificate.

## 6. ONGOING OPERATION

6.1 Bushland Management Plan and/or Aboriginal Heritage Management Zone must be implemented and progress reports are to be submitted to Council at intervals after initial works have been commenced, 1 year, 2 years, 5 years and 10 years.

## 7. OTHER APPROVALS

7.1 Apply the recommendations contained in the Bushfire Assessment Report dated 1/11/08, numbered B08816/1 and the Bushfire Management Plan November 2008. Ref B08902 FMP.

## 8. ADVICE

8.1 The public authorities may have separate requirements and should be consulted in the following aspects:

- a *Australia Post* for the positioning and dimensions of mail boxes in new commercial and residential developments;
- b *Jemena Asset Management* for any change or alteration to the gas line infrastructure;
- c *Energy Australia* for any change or alteration to electricity infrastructure or encroachment within transmission line easements;
- d *Telstra, Optus* or other telecommunication carriers for access to their telecommunications infrastructure.
- e *Gosford City Council* in respect to the location of water, sewerage and drainage services.

8.2 All work carried out under this Consent should be done in accordance with WorkCover requirements including the Occupational Health and Safety Act 2000 No 40 and subordinate regulations, codes of practice and guidelines that control and regulate the development industry.

8.3 Developers should make early application for a Section 307 Certificate under the Water Management Act 2000 from the Water Authority (Council). For a copy of the application form 'Application for Certificate under Section 305' contact Customer Service on (02) 4325 8200 or visit Council's web site [www.gosford.nsw.gov.au](http://www.gosford.nsw.gov.au) to download a form from the Water & Sewerage forms index.

8.4 Payment of a Subdivision Certificate fee must be made at time of lodgement of the subdivision plan with Council. The fee may be obtained from Council's Customer Service Unit on 4325 8222 or from Council's website <http://www.gosford.nsw.gov.au>.

## 9. PENALTIES

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- 9.1 Failure to comply with this development consent and any condition of this consent may be a ***criminal offence***. Failure to comply with other environmental laws may also be a ***criminal offence***.

Where there is any breach Council may without any further warning:

- Issue Penalty Infringement Notices (On-the-spot fines);
- Issue notices and orders;
- Prosecute any person breaching this consent, and/or
- Seek injunctions/orders before the courts to retain and remedy any breach.

### **Warnings as to Potential Maximum Penalties**

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

## **10. RIGHT OF APPEAL**

- 10.1 Sections 96(6) or 97 of the Act, where applicable, confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court exercisable within 60 days or 12 months respectively, from the date of determination.
- 10.2 To ascertain the date upon which the determination becomes effective refer to Section 83 of the Act.

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<<Insert Attachment Link/s Here >>